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ABSENTEE.

An absentee is a person who has resided in the State, and has departed without leaving any one to represent him.
The State v. *the Judge of the Second District Court of N. O.*, 390.

A person who leaves his domicil for a temporary sojourn in another State is not an absentee, if there are persons at his dwelling on whom service can be made in conformity with Art. 189 of the C. P., or if he leaves a duly authorized mandatory to represent him. *Ibid.*

The plaintiff in execution who undertakes to appoint a curator *ad hoc* to represent the defendant, should be ready to prove his absence or other sufficient cause for the appointment. *Ibid.*

See Prescription.
See Mortgage.

ACCOUNT.

See Executors and Administrators.
See Act, Private and Public.
See Husband and Wife.

ACTION.

Where there are several joint obligees, an action to enforce the contract cannot be maintained in the name of one of the obligees only. It is a joint right of action which can only be exercised in a suit jointly instituted by all the obligees. *Alling* v. *Woodruff et al*, 6.

Where an obligation is incomplete for want of the signatures of some of the parties who were to become jointly liable with those who signed, no action can be maintained on it.
Fish v. *Levine et als*, 29.

The mere promise of a debtor to pay his creditor out of a particular fund when collected, does not operate a transfer of the fund to the creditor, and vest in him a right of action for its recovery.
Connelly v. *Harrison & Co.*, 41.

The want of proper parties for a final decree may be brought to the notice of the Court at any time. The Court will ever notice it, *ex officio*, without a formal motion to dismiss.
The Belleville Iron Works Company v. *Its Creditors*, 77.

Per curiam: It does not appear to us that a person not a party to an agreement, nor representing real property to which it has rela-

ACTION, (*Continued.*)

tion, can maintain an action upon it, unless there is an express stipulation in his favor, or one which results by a manifest implication. *Gillis* v. *Nelson and Donelson*, 275.

A party cannot claim the payment of his demand out of the proceeds of the sale and also require that the sale shall be set aside and the land sold *de novo* for informalities in the sale. The plaintiff is not allowed to cumulate several demands in the same action, when one of them is contrary to or precludes another. *Ouliber* v. *His Creditors*, 287.

See ATTACHMENT.
See PRESCRIPTION.
See INSOLVENCY, ETC.
See MORTGAGE.

ACTION, PETITORY.

In a petitory action the plaintiff must succeed on the strength of his own title, and not on the weakness of the adverse title. But where a party obtained a quit claim by falsely and fraudulently attributing to himself certain rights, this Court will interfere and correct the error. It has been repeatedly decided in the Supreme Court of the United States, as well as by this Court, that persons who obtain patents by a suppression of a part of the facts of the case will not be permitted to derive any benefit thereby, but that such patents will inure to the parties entitled to recover the lands thus patented. *Per curiam,* we can see no good reason why the principle should not be extended to the case of a person obtaining a title in his own name, by fraudulently basing his demand on the habitation and cultivation of another, when the equitable right of the latter would otherwise be without remedy. *Cannon* v. *White*, 85.

See PRESCRIPTION.

ADMINISTRATORS.

See EXECUTORS and ADMINISTRATORS.

ADMISSIONS.

See EVIDENCE.
See CORPORATIONS.

AGENT AND AGENCY.

See PRINCIPAL and AGENT.

APPEAL.

The appellant is not required to look beyond the record, and cite, on appeal, persons who were not parties to the judgment appealed from. *Fish* v. *Johnson, Levine et als.*, 29.

The failure to make a garnishee a party to an appeal taken from a judgment rendered in favor of third persons claiming by interven-

APPEAL, (*Continued.*)

tion the funds in the hands of the garnishee, is a sufficient ground upon which to dismiss the appeal.
Reese & Ellis v. *Couyers & Co.*, 39.

Where a married woman, who has been assisted and authorized by her husband in bringing a suit, is cited alone in appeal, her husband not being mentioned in the citation of appeal, it is insufficient.
Ibid.

Where the certificate of the clerk of the inferior court showed that documentary and record evidence which the parties were to furnish was not embraced in the transcript, because it was not furnished to the clerk, and a portion of the omitted evidence was offered by the appellant—*Held:* That the appellants were in fault for not furnishing a complete record, and on motion of the appellee, the appeal was dismissed. *Clarke & Co.* v. *Gormley et al.*, 40.

Where the party who injoins the execution of a judgment is the defendant in execution, the amount in dispute, and not the value of the property seized, determines the jurisdiction of the Supreme Court, and the appeal will be dismissed if the amount in dispute is less than $300. *Bruneau* v. *Haughton et al.*, 47.

Where the defendants were charged with the management of the partnership affairs, an *ex parte* order of the court, which takes the business out of their hands and places it under the control of a receiver, may cause them irreparable injury, and is an interlocutory order from which an appeal will lie. C. P. 566.
Martin et al. v. *Blanchin et al.*, 83.

Where a record contains a bill of exception, the appeal can be maintained although the clerk does not certify that the record contains all the evidence adduced on the trial. C. P. 896. *Ibid.*

Where defendants were sued jointly and answered jointly, and an appeal was granted to both, on a motion in open court, made in the name of both, by their counsel of record, and the counsel signed the bond of appeal, as principal, in the name of his clients—*Held:* That such an appeal and such a bond is sufficient.
Widow Barnabé, f. w. c., v. *Mrs. Snaer et ux.*, 84.

The clerk's certificate to a record of appeal is good if stated as follows: "I do hereby certify that the foregoing fifty-six pages do contain a true and correct transcript of all the documents filed, testimony and evidence adduced, and all the proceedings had upon the trial of the suit." *Ibid.*

Upon a motion to dismiss an appeal from a judgment rendered after answer filed, upon the ground of imperfection in the attestation of the record by the clerk—*Held:* That in this form of appeal, the clerk should certify unqualifiedly that the transcript contains all the

APPEAL, (*Continued.*)

testimony adduced. If the clerk cannot so certify, and there has been no statement of facts prepared, no bill of exceptions or special verdict taken, and no assignment of errors filed, the appeal must be dismissed. *Watson* v. *Jones*, 98.

The act of the District Judge in granting an order of seizure and sale is a judicial act from which an appeal will lie; and such order may be reviewed in this Court. It may be addressed to a levee tax collector for levee dues.
Board of Levee Commissioners v. *Marks*, 111.

Sureties on an attachment bond are not parties to the suit, *stricti juris*, and need not be made parties to an appeal.
Patten, Lane, Merriam & Co. v. *Powell & Brother*, 128.

The general rule which requires that all parties interested in maintaining the judgment appealed from must be made appellees to the appeal, is limited in its operation to the parties to the suit, and does not extend to third persons interested in the judgment as rendered. *Ibid.*

Third persons may appeal from a judgment when they allege that they have been aggrieved by it, but the law does not require the appellant to make them (when not parties to the cause) appellees. *Ibid.*

Where defendants take separate appeals and file distinct bonds, one transcript will suffice. A doubtful error in the record, not essential, will not be sufficient ground for dismissal.
Baham v. *Langfield et al.*, 156.

Where parties arrested for an offence punishable at hard labor appeared and waived the examination before the magistrate, whereupon the prosecuting witness—the magistrate refusing to force them to an examination—obtained from the District Court a writ of *mandamus* peremptorily ordering the magistrate to compel their appearance and examination, from which order the prisoners sought an appeal which was refused—*Held:* That under the Constitution the Supreme Court has appellate jurisdiction of questions of law in criminal cases where the offence charged is punishable with imprisonment at hard labor.
The State on the relation of John Sheldon et al., 159.

An appeal may be taken from a final decision of the District Court on any collateral question of law raised in a case on which the Supreme Court has appellate jurisdiction. *Ibid.*

An appeal bond is defective unless given in favor o all the parties interested in the judgment appealed from, and the appeal should be dismissed. *Zeigler & Marcy* v. *Hunter et al.*, 165.

APPEAL, (*Continued.*)

Objections to the ruling of the Judge *a quo* cannot be made on appeal, if not made in the court below, and excepted thereto. *Stewart* v. *Harper*, 181.

The right of deciding into the sufficiency of the surety on an appeal bond, and of deciding whether the appeal shall be suspensive or devolutive, is exclusively within the province of the court from which the appeal is taken. *Mrs. Perilliat* v. *Fernandez*, 192.

This Court is only seized of jurisdiction to amend the judgment as between appellant and appellee: not as between the appellees. *Lallande* v. *McRae*, 193.

See HOMERICH v. HUNTER et als., 179, where this decision is re-affirmed.

In cases involving questions of fact, and where, usually, the evidence does not fully concord, no damages, as for a frivolous appeal, can be allowed. *Austin & McWilliams* v. *Moore*, 218.

Where judgment was rendered for a certain sum of money, and also, for the delivery of a note—*Held:* That the suspensive appeal bond must be sufficient in amount for both, or the appeal will be dismissed. *Maria Kelly et ux.* v. *Lehman et al.*, 251.

No amendment can be allowed in an answer to an appeal which is not made in the court *a quo*. *Spiller & Allen* v. *Their Creditors*, 292.

The failure of the clerk to issue, or of the Sheriff to make, the service of citation of appeal; or the neglect of the latter to make his return, cannot be attributed to the appellant; who, in such a case will be allowed further time to cite the appellee *Nelson* v. *Beard et als.*, 304.

This Court will not examine cases of mixed law and fact in criminal matters. *State* v. *Hooten*, 308.

The article 888 of the Code of Practice only applies as between appellee and appellant, and not as between two appellees. *Porche* v. *Lang et al.*, 312.

It is no good ground for a dismissal of an appeal that garnishees were not made parties thereto. It does not in any wise affect their rights, being neither for nor against them. *Barner* v. *Gorden*, 324.

No appeal can be entertained in this Court to revise that which has already obtained the force of the thing adjudged upon a former appeal. *Tufts & Hobart et als.* v. *Casey*, 336.

An appellant has the right to withdraw his appeal, on motion, at any time before the appellee has been cited; and in such a case he may renew it according to that article and article 593, within a year if he resides in the State, or two years if he be absent therefrom. *White* v. *Maguire et al*, 337.

APPEAL, (*Continued.*)

From the moment when the citation of appeal is served on the appellee, the appellant cannot withdraw his appeal; and whether the appellee obtain the rejection of the appeal by producing the record from the court below, or prosecute execution on the judgment appealed from, on the certificate of the Clerk that the record has not been brought up by the appellant (within three days after the time allowed him to file the record) the appeal shall be considered as abandoned, and the appellant shall not afterwards be allowed to renew it. *Succession of Benjamin Andrews*, 340.

Where the record shows that there was no answer or judgment by default against one of the sureties, and is otherwise defective, the case will be remanded for further proceedings.
The City of New Orleans v. *Odier & Co., et al*, 357.

The Judge, in granting an appeal demanded, shall state the amount of surety to be given by the appellant, and the day on which the appeal shall be returned.
State v. *The Judge Second District Court of N. O.*, 371.

Where a suit was commenced by attachment, intervenors claimed certain rights, and their intervention was dismissed, and thereupon said intervenors in open court appealed—*Held:* That as they gave the bond only in favor of plaintiff, the appeal must be dismissed; the defendant must be named as an obligee thereon. He was a necessary party to the proceeding in the lower court and equally so to the appeal. *Allen* v. *Rodgers*, 372.

Where a rule is taken to set aside an order of seizure and sale, and dismissed—*Held:* That where the plaintiff *assented* to the rule by going to trial, without objection, on its merits, the time occupied by such proceedings interrupts the delay allowed by law to the defendants to prosecute a suspensive appeal. *Abrams* v. *Jay*, 373.

Where a transcript is incomplete by the fault of the plaintiff and appellee, who has withdrawn the instrument on which was founded the action, and which was annexed to and made part of the petition, the cause must be sent back for a new trial.
Hagan v. *Cox, Syndic*, 374.

Where equity seems to require it, the case will be remanded for a new trial. *Lanfear* v. *Harper, et als*, 382.

Where the record of appeal contains neither bill of exception, nor assignment of errors apparent on the face of the record, and other proceedings are regular, the judgment of the Court *a quo* will not be disturbed. *The State* v. *Cassidy*, 389.

A party may appeal from all interlocutory judgments when such judgments may cause him an irreparable injury.
Pierce v. *The City of New Orleans*, 396.

APPEAL, (*Continued.*)

It is the *sum demanded* and not the amount of the judgment rendered, which gives this court jurisdiction.
LeBlanc v. *Pittman & Barrow*, 430.

A plaintiff may remit a portion of his *demand* before judgment, even with the design of depriving the Supreme Court of its appellate jurisdiction. *Ibid.*

In all matters not appealable, the inferior courts are presumed to have decided according to law, and such judgments cannot be distinguished, as to their validity, from those of this court. *Ibid.*

Where this court has jurisdiction for one purpose, it has for all facts embraced in the record. *Ibid.*

See MORTGAGES.
See PRACTICE.

APPOINTMENT.

See PUBLIC OFFICERS.

ARBITRATION.

See JUDGMENT.

ARREST.

See DAMAGES.

ASSESSMENT.

See TAXES, ETC.

ASSESSOR.

See EXECUTION.

ATTACHMENT.

The bond given by an intervenor claiming property attached in a suit between other parties, is a substitute for the property attached with regard to the plaintiff in the attachment, but not as to third persons claiming title to the property attached.
Mrs. White et al. v. *Hawkins et al.*, 25.

Where property had been attached and bonded by an intervenor claiming title to it, and after judgment against the defendant in attachment, a suit being instituted against the intervenor by a third party claiming the property, the defendant cited in warranty the plaintiff in attachment—*Held:* That the liability of the intervenor in the attachment suit on his bond having become fixed by the judgment, plaintiffs could not be held liable in warranty. *Ibid.*

A judgment creditor garnisheed a third person who had funds in his hands belonging to the defendant in execution; but it appeared that prior to the commencement of the proceedings in garnishment, the judgment debtor had given an order to his attorney upon the garnishee for all funds belonging to him in his hands, that this

ATTACHMENT, (*Continued.*)

order had been accepted, and it further appeared that the attorney was, upon the collection of the funds, to pay them over to the creditors of his principal, and that he had so informed the creditors—*Held:* That the attorney to whom the order was given, being nothing more than the agent of the judgment debtor, the acceptance of that order by the garnishee was merely an acknowledgment of a prëexisting obligation to pay to the judgment debtor the money in his hands; that it created no obligation in favor of the creditors, and that as the judgment debtor still had the money under his control, it was subject to attachment at the suit of a judgment creditor. *Connely* v. *Harrison & Co.*, 41.

Vessels and steamboats, employed in navigation in and out of the waters of the State, are like other property, subject to the law of attachment for debts not yet due.
Nimick, McClosky & Co. v. *Louisiana Tehuantepec Co.*, 46.

Where defendant in attachment makes a *prima facie* showing that he did not intend leaving the State permanently, and his adversary does not rebut this proof—*Held:* That the acts and declarations of the former were properly admitted.
Rhodes et als. v. *Myers, et als.*, 398.

Sureties on an attachment bond cannot be allowed to gainsay the recitals of their bond, after their liability had been fixed by the judgment and return of execution against their principals.
Price, Converse & Smith v. *Kennedy & Co.*. 78.

Where a third person in whose possession property of the defendant is attached, intervenes in the suit and bonds the property, his liability on the bond will be irrevocably fixed by a final judgment against him, in the same manner as the defendant himself would have been bound if the property had been released on a bond executed by him. *Wright* v. *Oakey, Hawkins & Co.*, 125.

A third person for whose advantage a stipulation is made is entitled to an equitable action to support the stipulation; and where the proceeding against the surety on a bond for the release of property attached is not by rule under the Act of 1839, but by a direct action on the bond, the assignment of the bond to the plaintiff by the Sheriff is not essential. *Ibid.*

Where intervenors gave a bond conditioned to satisfy any judgment that should be rendered against them, where they bonded property attached by the plaintiffs, on which they claimed a privilege as vendors—*Held:* That the plaintiffs cannot recover unless they show a breach of the condition of the bond; and they cannot show a breach of the condition, unless they show a judgment against them. *Yale Jr. & Co.* v. *Hoopes & Co.*, 311.

See Appeal.

ATTORNEY AT LAW.

See CONTRACT.

BANKRUPTCY.

See INSOLVENCY, ETC.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

The general denial admits the signature of the party sued as endorser of a promissory note, but leaves open every other legal defence.
Miller v. *Whitfield*, 10.

An endorser residing in the city where the note was protested, is entitled to notice of protest in person at his domicil; and where there is nothing to show that such domicil might not have been found on diligent enquiry, a note addressed to the endorser through the Post Office is insufficient.
Ibid.

The acceptor of a bill, when sued by the payee, has a right to call the drawee of the bill in warranty, in the case where the drawee is requested to pay not unconditionally, but in accordance with a contract, and he has been notified by the drawer because the consideration of the draft had failed.
Gilman v. *Pilsbury*, 51.

When cited in warranty by the drawee, the drawer may plead the failure of consideration as a defence to the suit.
Ibid.

Where the defence against a promissory note was, that plaintiff was not the *bona fide* holder of the note, that it belonged to the endorser, and had been transferred to plaintiff for the purpose of depriving defendant of a good defence which he had against the endorser, namely, that the note had been given without consideration, and merely for the accomodation of the endorser, who was also payee—*Held:* That if this plea be true, the endorser would be liable to defendant for the reimbursement of whatever defendant was obliged to pay on the note; that this eventual obligation towards defendant created on the part of the endorser a direct interest in the event of the suit, and that, at least until defendant released the endorser from liability over to himself, he could not be allowed to testify in the cause.
Price v. *Emerson*, 95.

Defendant's cause of action in such a case against the endorser would only date from the day of his condemnation to pay the note.
Ibid.

Where a drawer gives two endorsers as co-sureties, the one that endorses first is liable to the other for the whole debt.
Connelly v. *Bourg*, 108.

BILLS OF EXCHANGE, &c., *(Continued.)*

Accommodation paper is governed by the same rules as other paper, in regard to endorsers.

Ibid.

Strong evidence is required to vary the legal liability of endorsers as fixed by the *lex mercatoria*.

Ibid.

The testimony of the drawer of a draft in a suit against himself and first endorser, to the effect that the paper was accepted for their accommodation, is insufficient to charge the endorser. It is clear that such imperfect proof, tending to avoid the very promise of the drawees, implied by the acceptance in favor of the payee, could not have the effect of defeating the action.

Driver & Pierce v. *Miller and Kirk*, 131.

When a party endorses a note after its maturity, he is bound only on the same condition of demand of payment and notice of non-payment as any other endorser.

McCall v. *Witkouski*, 179.

The fact that a party in an original act against the signers of a promissory note in which a judgment of non-suit had been rendered, had sued them all as makers, does not estop him in a subsequent action against one of them from alleging that he had signed as surety on the note for the others.

Smith v. *Harrell*, 190.

Where a party by his original petition claims judgment *in solido* against several makers of a promissory note which in its form is merely a joint obligation, may by an amendment allege that one of the signers intended to bind himself as surety at the time of affixing his signature.

Ibid.

The second endorser of a promissory note, put into the hands of the plaintiff as collateral security for a greater amount than the sum advanced, is equally bound with the payee to a depositary, for the money lent upon it, with interest; and would have been bound to any *bona fide* transferree of the note before maturity, by allowing his endorsement to be put in circulation.

Jones v. *Byrne*, 202.

In a suit between accommodation endorsers of a promissory note, where the second endorser sought to render the maker and first endorser liable to him *in solido* after payment of the note, and the first endorser alleged that he and the second endorser had signed the note as co-sureties:—*Held:* That the maker was a competent witness to establish the contract of suretyship between the endorsers of his note for his own accommodation.

Hacket v. *Lenares et al.*, 204.

BILLS OF EXCHANGE, &c., *(Continued.)*

In a suit between the endorsers of a promissory note, the fact that the second endorser was the endorser of a prëexisting note for which this note was given in renewal, does not affect the liability of the first endorser on the note in controversy.

Ibid.

Neither the rendition of an account, nor giving of notes, can prevent the defendant from showing errors and inquiring into the consideration of the notes in a suit against him. If he had made payment, with a full knowledge of the errors, it would have been considered voluntary, and the money could not have been recovered back under the law then in force after the expiration of one year.

Payne & Harrison v. *Waterston*, 239.

The addition of usurious interest was a forfeiture of the entire interest, and the controversy must be decided by the law in force at the date of the note.

Ibid.

A bill of exchange was put in circulation before its maturity; was protested five days after it had become due, and was transferred to the plaintiff after its dishonor. The evidence also showing that the acceptors had failed before the maturity of the note, and that the transferrers of the plaintiff had likewise suspended before the transfer. It appearing further that the acceptors had, prior to the maturity of the bill, disposed of land scrips amply sufficient to cover it, (the bill being based on land scrips in the hands of the acceptors); and that the bill had been made for the accommodation of the acceptors, although this last circumstance was not known to the plaintiff and his transferrers:—*Held:* That the drawer was entitled to a seasonable notice, and is, therefore, by its omission, discharged.

Scott v. *McCulloch, Adm'r*, 242.

When a note bears interest from maturity, the interest begins to run from the day of payment specified, without allowing for days of grace.

Letchford & Co. v. *Starns*, 252.

When a note is made payable at a particular place, it is not necessary to allege or prove, in an action against the maker, that a demand for payment was made at the place designated in the note, to enable plaintiff to recover.

Ibid.

See Prescription.
See Interest.

BONDS.

See Practice.
See Appeal.
See Executors and Administrators.
See Courts.

BROKERS.

See Principal and Agent.

CERTIORARI.

No *certiorari* can issue in cases where no appeal can be taken.
State v. *Recorder of Second District of N. O.*, 164.

Where a motion for a continuance, affidavit and bill of exception have been lost, and the record is consequently defective, the case will be remanded for a new trial.
Abat & Généres v. *Harris*, 183.

CITATION.

See Pleading.

CLERKS OF COURTS.

Clerks of District Courts throughout the State have co-equal powers with the Judges thereof to issue commissions; to take testimony.
Cannon v. *White*, 85.

The Act of 1855, section 9, prescribes that "no account shall be homologated by the clerk of the court until it shall have been duly notified at least thirty days in the manner required by law."
Succession of Joel Foster, 305.

See Appeal.
See Commission.

COLLATION.

See Successions.

COMMISSIONS.

Where a commission to take testimony in another State is directed to a particular commissioner, there is no necessity for proof of his official character in order to authenticate his return.
Morrison v. *White*, 100.

Where the introduction in evidence of answers to interrogatories taken under commission out of the State is objected to, upon the ground that the certificate is illegal, the party objecting must set forth distinctly the illegalities complained of, otherwise the objection will not be noticed.
Ibid.

Where a special commissioner is designated by the court to take testimony under a commission out of the State, the seal of office is not required to the authentication of his return. *Ibid.*

Where a commission to take testimony in another State is executed by an individual named in an agreement of the parties annexed to the commission, the individual thus designated is a special officer of the court, and no proof of his official capacity is necessary.
Ibid.

COMMISSIONS, *(Continued.)*

Where the interrogatories and cross-interrogatories have been severally answered by each of the witnesses, it is not necessary that the return should show that they have been read to the witnesses.
Ibid.

It is not necessary that the return should show by whom the answers of the witnesses were reduced to writing. *Ibid.*

Where, by an agreement entered into by the counsel on both sides, which appears in the margin of a commission, a party has been named to take testimony, although he has not been named in the commission, his authority to execute the commission cannot be questioned. *Ibid.*

Where the acknowledgment of an act of sale from another State was objected to as evidence, upon the ground that it did not appear from the act that it was executed and signed within the jurisdiction of the officer attesting it—*Held:* That the capacity of the officer to receive acknowledgments being admitted, it is not material that the act should show where it was executed and signed.
Ibid.

The issuance of a commission by a deputy clerk to take testimony, when it is ordered by the court, is a ministerial act, and when executed is properly received by the court.
Rhodes et als. v. *Myers et al.*, 398.

See EVIDENCE.

COMMISSION.

See NEW ORLEANS.

COMMON CARRIERS.

The defendant was a common carrier; and, as such, he was responsible for the baggage of passengers. A loss suffered in consequence of the fault of the defendant's servant must be made good.
Blossman et als. v. *Captain Hooper et als.*, 160.

Where by a contract, a common carrier undertook to deliver certain merchandise at a particular point, for a certain price, and it appeared that the goods were only carried a part of the distance and that the shipper was obliged to pay, in addition to the full freight paid the carrier, a freight to other carriers for transporting the goods the remainder of the distance carried by the original contract—*Held:* that the extra charge thus incurred, was apparently a damage incurred by the failure of the first carrier to comply with his contract, and, as such, fell within the article 3204 Civil Code—giving the shipper a privilege on the vessel in which the goods were shipped and a right to the writ of sequestration.
White et al. v. *Steamer Kate Dale et als.*; 172.

COMMON CARRIERS, *(Continued.)*

The defendant undertook to transport for the plaintiff a car-load of live stock. It was bound to furnish a suitable and safe car, and it is responsible for any loss arising from neglect of duty in this particular. The mere presence of the owner did not lessen this responsibility if he had no power over the train, nor right to make any change in the disposition of the cars, which were necessarily under the control of the agents of the Company.

Peters v. *The N. O. J. & G. N. R. R. CO.*, 222.

COMMUNITY.

A Sheriff sale of community property, under a judgment of an individual debt of the surviving spouse, does not divest the undivided half-interest of the heirs of the deceased spouse.

Waring et als. v. *Zuntz*, 49.

The right of the survivor in community to claim the usufruct of the deceased spouse's interest in the community property is coupled with the obligation to furnish security in favor of the heirs.

Ibid.

Where the property belonging to the community has been purchased at a Sheriff sale, under a judgment rendered on an individual debt of the surviving partner in community, the minor heirs of the deceased partner are entitled to a judgment in revendication, without any alternative or conditional allowance.

Ibid.

Where a man, married for the second time, purchases property belonging to the community which existed between himself and first wife, at a sale to effect a partition between himself and the heirs of his wife—such property, unless he explain himself differently at the tim of the epurchase, will fall into the community then existing between himself and second wife.

Chapman v. *Woodward, Tutor et al.*, 167.

The neat proceeds of a crop growing, but ungathered at the time of the death of one of the spouses, belongs to the community.

Ibid.

The heirs of a deceased spouse are entitled to receive one-half of the fruits and revenues of the community property from the survivor, when such survivor is not entitled to the usufruct.

Ibid.

The charge for such fruits and revenues accruing before a second marriage is against the separate estate of the survivor; but that accruing after a second marriage is against the community arising from such second marriage.

Ibid.

COMMUNITY, *(Continued.)*

In actions of partitions involving a settlement of claims or accounts, no prescription is applicable except that which is a bar to the partition itself.

Ibid.

The paraphernal property which is not administered by the wife, separately and alone, is considered to be under the management of the husband, &c.

Collins, Widow Ilon, v. *Babin et al.*, 290.

The wife who took an active concern in the effects of the community, cannot renounce the same.

Ibid.

Acts which are simply administrative or conservatory, do not come here under the denomination of active concern.

Ibid.

Where the wife takes an active part in the effects of the community—*Held:* That she has shown a tacit acceptance of the same, and the consequence of her acts is to render her responsible for one-half of the claims on the community. Neither can she, after having thus fixed her liability, be exhonorated by *simply* producing letters of tutorship and an inventory.

Ibid.

The presumption of law established by Art. 2372 C. C. is, that every debt contracted during the existence of the marriage is a debt of the community.

Kennedy v. *Bossiere*, 445.

When a debt is created during the existence of the community or marriage by the joint action of the husband and wife, purporting to be on her account, it must be presumed to be either a debt of her separate estate, or a debt of the husband and the community.

Ibid.

If the contract is not that of the wife, it is that of the husband. The burden of proof is on the plaintiff to show that it is that of the wife.

Ibid.

A plea of coverture is personal to the wife, and does not relieve the surety, who, in this respect, may be bound beyond his principal.

Ibid.

Where husband and wife are separate in property—*Held:* That a contract made by the former cannot be charged to him as due by the community; nor can he be bound individually, unless he has made it his own debt, or unless it was, it point of fact, his own contract.

Ibid.

COMMUNITY, *(Continued.)*

The burden of proof falls upon the husband, when he pleads want or failure of consideration against his own contracts; but this rule has no application when the contract of his wife, separate in property, is opposed to him.
Ibid.

See Husband & Wife.
See Evidence.

COMPENSATION.

When the debt, which the defendant offers in compensation of that which the plaintiff claims, is of a less amount than the one demanded, compensation only takes place for that amount, and judgment must be given in favor of the plaintiff for the surplus; the defendant must pay the costs, unless he shows that he has made a real tender of such overplus, at the time and in the manner provided by law.
Stewart v. *Harper*, 181.

Compensation is of three kinds: legal or by operation of law; compensation by way of exception; and by reconvention. *Ibid.*

COMPROMISE.

A compromise has between the interested parties the force of the thing adjudged. It may be rescinded by a direct action, for error in calculation, error in the person or matter in dispute, for fraud or for duress. But it cannot be attacked for error of law or for lesion.
Adlé v. *Prudhomme and wife*, 343.

See Pleading.

CONFLICT OF LAWS.

The effect of an act passsed in another State to take effect in this, must be governed by our own laws.
Gauze v. *Bullard*, 107.

CONSIDERATION.

See Bills of Exchange, &c.

CONSTITUTION.

See Public Officer.

CONTRACTS.

Incapacitated persons, when seeking to be relieved from the effects of engagements contracted by them *in fraudem legis*, are entitled to show the real nature of the transaction; and persons so incapacitated are not bound to produce a counter-letter, but may use parol evidence to invalidate the contract.
Mrs. Leblanc v. *Bouchereau*, 11.

Where a contract was made, purporting to be a sale of a slave by a married woman, and it appeared that she retained possession of the slave for some time after the sale;—that the price was inadequate; that the sale was redeemable; that the very instrument itself showed

CONTRACTS, *(Continued.)*

that the price was not paid in presence of the notary or of the witnesses, although the stipulation was for a cash sale; and lastly, that the so called vendee was the creditor of her husband—*Held:* That this was not, in reality, any contract of sale between the parties. Redeemable sales, unaccompanied by delivery of the thing sold, of which the considerations are inadequate, courts are bound to consider, without sufficient evidence to the contrary, as contracts for which the thing nominally sold stands as security, and nothing else.
Ibid.

In such a case as that just mentioned, the married woman would be entitled to the value of the services of her slave from the moment that she afterwards became dispossessed by her nominal vendee.
Ibid.

Courts are bound to give legal effect to all contracts, according to the true intent of all the parties.
McKie & Co. v. *N. O., Jackson & G. N. R. R. Co.*, 79.

Per curiam. The policy of our law is to discountenance all restraints upon the rights of the owner of property to use and dispose of the same as he shall think fit.
Ford v. *Danks*, 119.

The owner of a building is not personally liable to a sub-contractor who has been employed by the contractor in making additions or works upon the building.
Pelanne v. *Coudreau*, 127.

The contract between the owner and contractor, while it is not binding on the sub-contractor, may still be used in evidence to show in what capacity the former was acting.
Ibid.

The Act of 1855 has not fixed the amount to be paid to teachers in the Public Schools, and where there is no contract, they can recover on a *quantum meruit.*
Offut v. *Bourgeois et als., School Directors*, 163.

All agreements relative to personal property, and all contracts for the payment of money, where the value does not exceed $500, which are not reduced to writing, may be proved by any competent evidence; such contracts or agreements above $500 in value, must be proved at least by one credible witness, and other corroborating circumstances.
Alexander v. *School Directors*, 191.

A contract in which anything is stipulated for the benefit of a third person, who has signified his assent to accept it, cannot be revoked

CONTRACTS, *(Continued.)*

as to the advantage stipulated in his favor, without his consent. Such a person must be made a party to a suit where such an interest is involved.

Cucullu v. *Walker*, 198.

A contract must be understood in that sense in which it will have some effect rather than in that in which it cannot have any.

Acinspring v. *Bennett & Sprague*, 201.

To the general rule that parties to a contract cannot stipulate but for themselves, there is an exception when one makes, in his own name, some advantage for a third person the condition or consideration of a commutative contract, or onerous donation. He for whose benefit this advantage is stipulated, has an equitable action to enforce the stipulation, when he has signified his assent in the premises.

The N. O. St. Joseph's Association v. *Magnier*, 338.

A penal obligation cannot be stipulated for the benefit of third persons. A penal clause, being a secondary obligation having for its object the enforcement of a primary obligation, cannot be assimilated to a condition or consideration.

Ibid.

Where there is a special contract which fixes a contingent compensation, a party cannot recover on a *quantum meruit.*

Spear v. *Densler*, 383.

When a contract stipulates no time within which it is to be performed, the party bound is entitled to a reasonable time for its performance; to be determined by circumstances, and the nature of the thing stipulated to be done; and besides, he must be put in default before an action in damages can be maintained against him.

Lindsey v. *Police Jury of Point Coupee*, 389.

No contract can be avoided unless made in fraud of creditors. If made in good faith it cannot be annulled, although it prove injurious to the creditors.

Xiques, syndic, v. *Rivas et al.*, 402.

No sale of property, or other contract made in the usual course of the party's business, nor any payment of a just debt in money shall be avoided, although the party was in insolvent circumstances, and the person with whom he contracted, or to whom he made the payment, knew of such insolvency.

Ibid.

Plaintiff can recover upon stipulation *pour autrui* under C. P. 55, C. C. 1884, 1896. These articles, however, do not estop the person making the stipulation from setting up equities; and the right

CONTRACTS, *(Continued.)*

to do so must be determined by a recurrence to such general principles of law and justice as regulate the subject of contracts.
Freligh v. *Miller et al.*, 418.

Error as to the thing which is the subject of the contract does not invalidate it, unless it bears on the substance or some substantial quality of the thing.
Ibid.

Where a magistrate assigns counsel, under the statute, and another assists the one so assigned, the plaintiff cannot recover against the defendant where no contract was made with him personally.
Jones & Daugharty v. *Goza*, 428.

See New Orleans.

CORPORATIONS.

The individual corporators may sue in their individual names when they have rights in the corporation to vindicate which relate to property or any intellectual gratification, the violation of which can be made the basis of a demand for money.
Knabé et als. v. *Ternot et als*, 13.

The act of the majority of the corporators is considered as the act of the whole. But as the individuals who compose a corporation do not directly own its property, so they act in the transaction of its business primarily as agents; and where the individuals composing one corporation formed a majority of another and separate corporation—*Held:* That they could not as agents of the first, apply to themselves, as agents of the second, for a lease of the property of the latter, and then, as agents of the same, grant it on such terms as should please themselves as agents of the former, in opposition to the wishes and protests of their co-corporators of the latter corporation, and to their exclusion. The co-corporators thus injured may repudiate this act of the majority upon these grounds: if they were joint owners, they could not be judges in their own cause, and if they were agents, they represented incompatible interests. The agents of a corporation when once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as agents of individuals and private persons.
Ibid.

The dissolution of a corporation cannot be effected by a resolution to that effect of a majority of its members.
Curien et als. v. *Santini et als.*, 27.

The majority of the members of a corporation may, by the abuse of its powers, commit an act which would justify the forfeiture of its charter, but they cannot make such act the basis of an action instituted by themselves against the minority, for the purpose of having the franchises of the corporation declared forfeited.
Ibid.

CORPORATIONS, *(Continued.)*

A corporate body is a juridical being, separate and distinct in its rights and obligations from the individual members who compose it, and while it exists, the majority of its members cannot maintain an action against the minority, for the sale and distribution of the proceeds of the property belonging to it.

Ibid.

It is not within the power of the majority of the members of a corporation to dissolve it as long as a sufficient number of members to represent and continue the corporation exists.

Polar Star Lodge No. 1 v. *Polar Star Lodge No.* 1, 53.

The want of a resolution of this corporation to authorize the institution of a suit in their name can only be taken advantage of by pleading it as an exception, *in limine litis.*

Ibid.

A resolution passed by a majority of the members of a corporation authorizing a donation of the property of the corporation to a new corporation, in which the members so voting are corporators, is unauthorized, and a donation made in pursuance of it will be void.

Ibid.

The fact that a plaintiff has, in a previous suit, recognized defendants as forming a company, without any reference to its having been regularly incorporated, is not such an admission as will estop him from showing that the company has no legal existence as a corporation. In order to estop him there should at least be an admission that the company was entitled to exercise corporate rights and privileges.

Field & Co. v. *Cooks et als,* 153.

The fact, that a party is shown to have bargained with a company through its representative officers, may, in the absence of a stipulation to the contrary, give rise to the inference that he intended to look to the members jointly for the amount of their subscription; but if, instead of a corporation, the company should form no more than a commercial partnership, such an inference should not prevail over the recognized legal rights of the parties—particularly where it is not shown that he was in a situation to have known certainly as to the existence or non-existence of the corporation.

Ibid.

The failure of a company, in forming a corporation, to obtain the authorization or certificate of the District Attorney or Judge, and to have the act of incorporation duly recorded, is not a mere informality within the meaning of the 8th section of the Act of 1852, but a substantial omission which strikes the act of incorporation with nullity.

Ibid.

CORPORATIONS, *(Continued.)*

The Board of Directors alone has the power to make admissions in regard to the controversy which would bind the company, and no ordinary agent of the company would possess the power, unless expressly delegated.

N. O. O. & G. W. R. R. Co. v. *Williams*, 315.

COSTS.

See COMPENSATION.

COURTS.

The article 756 C. P. gives to the Court a discretion in relation to the trial of summary cases with which the appellate Court will not interfere.

Police Jury of Ascension v. *Manning, tutor, et al.*, 182.

When a Court usurps jurisdiction the proper remedy is by the writ of prohibition.

State v. Third District Court of N. O., 185.

See APPEAL.
See INJUNCTION.

CRIMINAL LAW.

Where the defendant was in custody at the time a bond for his release was given, neither he nor his security can be heard to gainsay the regularity of the proceeding.

State of Louisiana v. *Canady et al.*, 141.

The objection to the mode or manner of empaneling the Grand Jury comes too late after the first day of the term of the District Court.

Ibid.

An indictment concluding "contrary to the form of the statute in such cases made and provided" must be intended to mean the statute of *the State of Louisiana.* The criminal statutes of no other government are cognizable, properly speaking, by our courts.

The State v. *Karn.* 183.

An error in spelling the word "foreman" "*fourman*" is not important, as the pronunciation of the same is not thereby changed.

Ibid.

A *pardoned* convict can testify in a criminal prosecution, but one who has served out his time of punishment cannot. The endurance of the penalty does not remove the infamy.

The State v. *Benoit*, 273.

In civil matters, under article C. C. 2260, those whom the law deems infamous are not competent witnesses.

Ibid.

The Act of 1855 permits convicts to testify for and against each other in lawsuits.

Ibid.

CRIMINAL LAW, *(Continued.)*

Although the rule is that evidence of the commission of a felony distinct from the one charged in the indictment, is inadmissible, yet an exception lies when the purpose is to prove that the prisoner was actuated by malice.

The State v. *Mulholland*, 376.

The testimony of a witness before an inquest, may be admitted to discredit his testimony at the time of trial.

Ibid.

Confession is admissible in evidence where it has been elicited by questions put by a person having no authority, as where the party asking them is a police officer.

Ibid.

The error which will justify the reversal of a judgment must be one which has, or may have, occasioned the prisoner some injury.

The State v. *Brown*, 384.

On a motion for a new trial, in criminal cases, it is necessary to specify the ground upon which relief is sought; and proof made accordingly.

The State v. *Gallagher*, 388.

The Acts of 1852 and 1856 contain no express repeal of the former laws investing the Mayor with a concurrent criminal jurisdiction with the several Recorders; nor are the provisions of these Acts contrary to, or repugnant to those of the former statutes investing the Mayor with such jurisdiction.

The State on the relation of Wm. C. Emerson v. *Monroe, Mayor*, 395.

The prescription of one year from the finding of the Grand Jury, governs all criminal cases, except murder, robbery, arson, forgery, and counterfeiting.

State v. *Widow Walters*, 400.

It is the duty of the State to contradict the plea of prescription; not of the party setting it up.

Ibid.

Time is an essential averment in an indictment; but it is sufficient for conviction to show that the fact charged had taken place at any other time, whether *before* or *after* the day laid, so that it be *before* the time when the indictment or appeal was preferred: *provided* the *charge* had been preferred in due time.

Ibid.

A formal conviction or acquittal will bar a subsequent prosecution. But the acquittal or conviction must be a legal one—upon trial by verdict of a petit jury. The verdict must be a valid one, not subject to be set aside. If the court award a new trial upon quashing the verdict, whether at the instance of the prisoner, or, in special

CRIMINAL LAW, *(Continued.)*

application, on the application of the prosecution, it is evident, in the eye of the law, the accused has not been in jeopardy.

Ibid.

Every person shall be allowed to make his full defence by counsel learned in the law; and the court before whom he shall be tried, or some judge thereof, shall immediately upon his request assign to him such counsel as he may desire. The counsel of any person accused of crime shall have free access to him at all reasonable hours.

The State v. *Ferris*, 425.

The right to be heard by counsel learned in the law is a precious one; it is guarantied to all parties even in civil causes. Where counsel fails to appear at the trial, without the connivance of the accused, the latter is entitled to a postponement of the case for the purpose of obtaining other assistance.

Ibid.

The threats of *a third person* must not be allowed to militate against a prisoner, and when they do not constitute part of the *res gestæ* are inadmissible in evidence to criminate the prisoner, and more especially in cases of murder, to prove on his part premeditated malice.

The State v. *Hermogène Perry*, 444.

A conspirator is not a third person, and *vice versa.*

Ibid.

See APPEAL.

CURATOR.

See EXECUTORS AND ADMINISTRATORS.

DAMAGES.

A plaintiff in a case of damages *ex delicto* must make his case certain to entitle him to a recovery. A probable case will not satisfy the exigence of the law in an action.

Ranson v. *Labranche et als.*, 121.

No damage will be allowed on a simple charge of negligence, imprudence or want of skill, unless such negligence, imprudence, or want of skill, be conclusively established.

Ibid.

Damages arising *ex delicto* cannot be recovered unless specifically proven.

Minor v. *Wright*, 151.

Where a partial payment has been made on a judgment, and a settlement between the parties for the balance, and an *alias* writ of *fieri facias* sued out on which the property of the plaintiff was sold—*Held:* that no action in damages could be sustained. So long as there was a balance due on the judgment, the defendant had a right to his execution for its collection.

Harper v. *Terry*, 216.

DAMAGES, *(Continued.)*

A party has a clear right of action, *ex contractu*, under a bond given fo a writ of arrest, to the same extent that would the owner of sequestered property for the wrongful suing out of a writ of sequestration, the condition of the bond being the same in both cases. Hence it is not necessary to entitle a party to recover *special damages* resulting from his illegal arrest, that he should allege and prove malice and want of probable cause.

Phillips v. *Bonham et al.*, 387.

Where the defendants in making or procuring the arrest, acted under the advice of counsel given in good faith, that they had a good cause of action against the defendant in said suit, and a legal right to hold him to bail therefor—*Held:* That the defendants are not liable in damages.

Ibid.

Every proprietor whose levee shall have been broken by his own neglect to comply with the provisions of the 25th section of the Act of 1859, shall be liable towards the planters who shall suffer by it, for all damages and losses.

LeBlanc v. *Pittman & Barrow*, 430.

See Malicious Prosecution.

See Reconvention.

DEATH.

A supposed loss of life by reason of a shipwreck, an earthquake, a war, a plague, an explosion, and like perils, is within the sound discretion of the Judge to determine, founded on the facts of each particular case.

Succession of George Charles William Vogel, 139.

DEFAULT.

See Contracts.
See Practice.
See Sale.

DEPOSITIONS.

In respect to depositions, complete mutuality, or identity of all the parties, is not required. It is generally sufficient if the matters in issue are the same in both cases, and the party against whom the deposition is offered has full power to cross-examine the witness.

Cannon v. *White*, 85.

The absence of a commissioners's signature to depositions, taken under a commission, is a fatal defect.

Price v. *Emerson*, 95.

DIVORCE.

The wife is entitled to a divorce, upon proof of adultery, against her husband.

Mehle v. *Lapeyrollerie*, 4.

DIVORCE, *(Continued.)*

Positive or direct evidence is not necessary to establish adultery. Where from the circumstances proven no other inference can be drawn, but that there was an improper intimacy or illicit connection between the parties, the fact of adultery or concubinage will be considered as substantiated.

Ibid.

The charge of adultery, preferred by the wife against the husband, to serve as a basis for a judgment of divorce, does not of itself amount to a defamation upon the failure of the former to sustain the allegation by proof. If the accusation be not wanton, or malicious, although unfounded in point of fact, it cannot with propriety be said that there was a public defamation.

Homes v. *Carrier*, 94.

DOMICIL.

See PRACTICE.

DONATIONS.

In all nuncupative wills by public act, where the testator does not sign, but affixes his mark, there must be made, under pain of nullity, express mention of the testator's declaration of his inability to sign. Express mention is required, and it cannot be inferred.

Shannon et al. v. *Shannon, Ex'r*, 9.

The language used by the notary in drawing up a nuncupative will by public act may be ungrammatical, but if it leaves no ambiguity as to the fact that the language of the clause "revoking besides all other wills," &c., is that of the testator, and not an inference of the notary, the will cannot be set aside.

Acosta v. *Marrero*, 136.

Articles 1574 and 1575 of the Civil Code lay down the rules regulating the forms or formalities to be observed in making a nuncupative will by private act. Such a will must be tested by those articles, and is subject to no other formality.

Prendergast v. *Prendergast*, 219.

The testator must, therefore, either dictate his will, or, in the absence of such dictation, he must present the instrument, which he has caused to be written, and declare that it contains his last intentions. In other words, this presentation and declaration, which is unnecessary when the will is dictated, is intended to supply the want of dictation. There is a manifest difference between dictating a will and causing it to be written. Dictation is used in a technical sense, and means to pronounce orally what is destined to be written, at the same time, by another. Such is the settled definition of this term under our jurisprudence.

Ibid.

DONATIONS, *(Continued.)*

If the law requires a technical dictation, there must be a strict compliance. Nor would the courts be justified in presuming a compliance; for in nuncupative wills by private act nothing can be taken by implication.
Ibid.

A will cannot be annulled on the ground that all the formalities were carried on in the presence of the witnesses. If it will suffice to comply with some formality in their absence, *a fortiori* in their presence. The attendance of witnesses is intended as a sanction to the proceedings, and cannot invalidate them in any contingency.
Ibid.

MERRICK, C. J., dissenting. Article 1588 of the Civil Code declares, that the formalities to which testaments are subject by the provisions of the Code, must be observed, or they are null and void. There is not then any discretion left the magistrate to reason concerning the use or necessity of the formalities prescribed. It is sufficient for him that they *are* prescribed. Formalities are declared by the Code to be of the essence of wills, that is, essential to their validity. The law on the subject has shown the greatest care to protect the testator from surprises and captation.
Ibid.

Heirs, or any party interested, can attack a legacy made in violation of Art. 1468 of the C. C. The right is not confined to forced heirs alone.
Carmena v. *Blaney et als.*, 245.

A woman having obtained a separation *à mensa et thoro*, four months afterwards goes with a co-resident of the State of Mississippi, and marrying him there returns to their domicil here—a judgment *à vinculo matrimonii* never having been decreed—*Held:* That she was only a concubine, and not entitled to the rights of a wife, in a last will and testament.
Ibid.

The act of confirmation or ratification of an obligation against which the law admits the action of nullity or rescission, is valid only when it contains the substance of that obligation. The mention of the motive of the action of rescission, and the intention of supplying the defect on which that action is founded.
Ibid.

A donation of movables *mortis causa* to a concubine is valid so far as it does not exceed one-tenth part of the whole value of the estate.
Ibid.

The nullity of a donation, or reduction in a will, inures to the benefit of all the legal heirs of the testator. The property reverts back to the succession, to be distributed by law.
Ibid.

DONATIONS, *(Continued.)*

Where it is stated in a nuncupative will that it was dictated to the notary, yet in point of fact there was no dictation—*Held:* That it was valid *as a private act.*
Succession of Anna Morales, Wife of Marigny, 267.

When a testator causes a will to be written, whether in the presence or in the absence of witnesses, and presents the instrument to them, declaring that it contains his last intentions, it is a full compliance with article 1574 of the Civil Code.
Ibid.

The affirmative answer of a testator to the question whether this was his will, is not equivalent to the "presentation" of the will to the witnesses as required by the second paragraph of article 1574 of the Civil Code. Without such presentation, the will must be declared void and of no effect.
McCaleb et al. v. *Douglass et al.*, 327.

A party may well ask the nullity of a will, and, in case he fails in that instance, sue for a reduction of excessive dispositions.
Hollingshead et ux. v. *Sturges, Ex'r, et als.*, 334.

The object of probating a will is to procure its execution; and when a judgment of homologation is obtained contradictorily with proper parties, the judgment, as between them, will bar a subsequent action in nullity.
Ibid.

Husband and wife may by their marriage contract, make reciprocally, or one to the other, or receive from other persons in consideration of their marriage, every kind of donation, according to the rules and under the modifications prescribed in the title of donations *inter vivos* and *mortis causa.*
Widow Nixon v. *Piffet et als.*, 379.

As the laws of Spain remained in force in Louisiana after the adoption of the Code of 1808 and until the repealing Act of 1828, a donation *propter nuptias* or *arras* is not included in the dower.
Ibid.

DOWRY.

A husband cannot compensate the debt due by him to his wife's succession for the return of property settled on the wife in dowry by the physician's bill which he has paid for attendance during her last illness, although the husband, at the time of her death, was insolvent.
Lacour et ux v. *Lacour*, 103.

Where, by the marriage contract, the wearing apparel of the wife is settled in dowry at an estimated value, the husband will owe the amount, on the dissolution of the marriage, at which it was estimated.
Ibid.

DOWRY, *(Continued.)*

The husband is entitled to compensate the claim of the wife's heirs for her dowry, with the amount paid by him for her funeral expenses. *Ibid.*

The husband has a vested interest in the dowry of his wife. He enjoys it as long as the marriage lasts, and is entitled to its administration exclusively. He is subject to all the obligations of the usufructuary. The property of dotal immovables, whether valued or not, can never be transferred to the husband even by express agreement; not only during the marriage, but by the marriage contract; *aliter* as to movables and slaves. *Esneault* v. *Cooley, tutor*, 165.

The husband, therefore, cannot become, even at forced sales, the adjudicatee of the wife's dotal immovables, to her prejudice; and if he does so purchase, the sale inures to her benefit and the property remains dotal; he becoming her creditor for the amount thus disbursed on her account out of his own funds. *Ibid.*

See DONATIONS.
See MARRIAGE.

EMANCIPATION.

The presumption of color must yield to proof of servile origin. *Morrison* v. *White*, 100.

The law does not contemplate that any number of crosses between the negro and the white shall emancipate the offspring of the slave. *Ibid.*

See SLAVES AND STATU LIBERI.

EQUITY.

See APPEAL.

ESTATES, RIGHTS TO

See SERVITUDES.

EVIDENCE.

The judicial admission, in order to be divided against the party pleading the same, must be one in the nature of a confession and avoidance of the plaintiff's demand, or some portion, as in the plea of compensation, otherwise the admission cannot be divided. *Bullitt* v. *Stewart*, 22.

In cases of fraud and simulation it is a cardinal principle that great latitude in the introduction of evidence is allowed, leaving to the Court and jury to determine, from all the surrounding circumstances, the weight and effect of such evidence. Thus, the conversations and admissions of the parties, even when not made in the presence of each other, their acts and actions, are, under the above restrictions, admissible in evidence. *Cannon* v. *White*, 85.

EVIDENCE. *(Continued.)*

Where the extra-judicial declarations of a party were offered in evidence against him, and it appeared that they were not necessarily called for when made; that they were in some instances made when in an inebriated condition, and always boastfully—*Held:* That if admissive at all in a suit relating to his succession, they should be entitled to no weight whatever, unless strongly fortified by other and independent corroborating evidence.
Chapman v. *Woodward, Tutor, et al.*, 167.

The declarations of the parties to a public act cannot be contradicted by parol testimony introduced by the party who has made those declarations, unless upon allegation and proof of fraud, duress, or error.
McRae v. *His Creditors*, 305.

Besides proving the genuineness of a lost or destroyed deed, it is incumbent upon the party who holds under it, to prove its contents in a most satisfactory manner.
Cooper and Husband v. *White et als.*, 319.

A judgment in a case to which the defendants were not parties or privies, is *res inter alios acta*, and not admissible in evidence.
Mestier v. *N. O. O. & G. W. R. R. Co.*, 354.

The introduction of another suit in evidence does not, in general, make the testimony on which the judgment was rendered, evidence in the new suit.
Ibid.

The proces-verbal of a survey made under the order of the court is admissible in evidence as a plan connected with the surveyor's testimony and essential to its explanation.
Gillis v. *Nelson and Donaldson*, 275.

Presumptions are consequences which the law or the Judge draws from a known fact to a fact unknown. Presumptions not established by law are left to the judgment and discretion of the Judge.
Cronan v. *New Orleans*, 374.

See COMMISSION.
See DIVORCE.
See INJUNCTION.
See LETTING AND HIRING.

EXECUTION OF JUDGMENT.

The Sheriff is the officer of the law charged under the writ of execution with certain duties, and his acts (where there is no improper interference on the part of the creditor) are at the risk of the defendant in execution, who has it in his power to dispense with the services of the Sheriff by paying the debt.
Baham v. *Langfield et al.*, 156.

EXECUTION OF JUDGMENT, *(Continued.)*

A sale of the debtor's property and the execution of a twelve months bond does not discharge the judgment. *Ibid.*

The execution of judgments belongs to the courts by which the causes have been tried in the first instance, whether such judgments have been reversed or affirmed on appeal.
The State v. *Third District Court*, 233.

The salary of a city assessor is exempt from execution, he being the officer of a political corporation.
Chaudet v. *De Jong et al.*, 399.

See DAMAGES.
See HUSBAND AND WIFE.
See JUDGMENT.
See SURETY.

EXECUTORS AND ADMINISTRATORS.

The administrator of the estate of one of the partners of a commercial firm, who had acted as liquidator of the partnership affairs, has only to account for and pay over to the new liquidator the funds which had come into the hands of the former liquidator.
Succession of John Twibill, 34.

Curators or administrators are forbidden to purchase any property entrusted to their administration. Such a sale is null and void. This does not apply, however, to a sale made by an heir of his interest in the succession to the administrator: such a nullity is relative, and does not avail any one except the vendor.
Peyton v. *Enos*, 135.

An administrator to a succession will not be appointed when there is no absolute necessity for it.
Alleman v. *Bergeron*, 191.

At a sale of succession property, it was bought in and the purchaser gave notes for a portion of the price. This purchaser shortly afterwards sold the property, and together with the administrator left the State. Another administrator having been appointed, instituted a suit against the second purchaser to recover the amount of the promissory notes, and the latter answered alleging the payment of the notes, and on trial of the case produced the notes with the name of the original vendee erased. The court held: that where there was a charge of fraud made and substantiated as in this instance, against the administrator and original vendee, and where it also appeared that the latter was in indigent circumstances and without the means of paying the notes;—in order to sustain this plea of payment, it was not sufficient for the defendant to produce the notes with the name of his vendee erased, but that he must also show an application of the price which he paid for the property to

EXECUTORS AND ADMINISTRATORS, *(Continued.)*

the extinguishment of the notes in the hands of the administrator, and the circumstances under which the notes came into his possession.

Brown, Adm'r, v. *Sadler,* 206.

Ten days public notice must be given before letters of administration can be granted to an applicant.

Succession of Talbert, 230.

Per curiam. We concede, in proper cases, the right and propriety of an administrator to employ such agents as a collector and bookkeeper, and to pay them out of the assets of the succession.

Succession of R. L. Schmidt, 256.

No suit may be commenced against a succession until the claim has been communicated to the administrator, and until he has either approved or refused to approve the same. His approval must be in *writing,* on the claim or upon a paper which he shall annex to it. But this formality is not sacramental. All that the law requires is the administrator's refusal of a *written* acknowledgment of the justice of the claim before suit can be instituted. Nothing in the Code requires the creditor to trust the evidence of his claim out of his own possession. Articles C. P. 984, 985, 986 and 987 are to be construed together.

Succession of Yarborough, 258.

An account presented to an administrator or his attorney, and approved, is equivalent to a judicial demand, by Art. 987 of the Code of Practice, and bears judicial interest of five per cent., and no more, from the date of such liquidation.

Ibid.

Where there is a suggestion of the account and settlement of the administration, and discharge of the administrator, under the Act of 1855, page 78, the immediate dismissal of a suit against the administrator will not be authorized. According to that statute, the proper practice seems to be, that the cause be continued for the making of the heirs parties, if that be practicable.

Jones v. *Britton,* 320.

When an heir conveys to the administrator his interest in the property, the latter does not act in his fiduciary capacity, and cannot be assimilated to a vendor when he disposes of it.

Vanwinckle et al. v. *Matta,* 325.

The general rule is that all persons are capable of contracting; the incapacity is the exception; and it should not be extended beyond the clear import of the law.

Ibid.

The objection which applies to an adjudication in due course of administration, does not arise in a private transaction between the execu-

EXECUTORS AND ADMINISTRATORS, *(Continued.)*

tor and one of the heirs. But even as regards judicial sales, the law has been modified by allowing parties in interest, who happen to be administrators or executors, to become purchasers.

Ibid.

EXECUTORY PROCESS.

See Injunction.
See Seizure and Sale.

EXPROPRIATION.

The proceedings for the expropriation of property of an individual for the public use (C. C. 2608) are summary in their nature; but the statute does not require that the District Judge shall sit in vacation for hearing them.

Police Jury of Ascension v. *Manning, Tutor, et al.*, 182.

In the matter of expropriation of property to public use, all the forms of law must be rigidly observed. Some of the signers of a petition to open a street must be those who possess a portion of the land on the projected street.

New Orleans, on prayer for opening Royal St., Sohr et als. v., 393.

FRAUD.

The party's relief in cases of fraud is obtained under articles 1814 and 1841 of the Civil Code.

Vanwickle v. *Matta*, 325.

See Evidence.
See Sale.

GARNISHEE.

The liability of a garnishee in an attachment suit cannot extend beyond the amount of funds in his bands belonging to the defendant.

Peet, Simms & Co. v, *Whitmore*, 48.

Proceedings in garnishment under the Act of the 20th March, 1839, p. 166, are commenced by petition and interrogatories; and the property and effects in the possession of the garnishee belonging to the defendant in execution, can only be decreed to be levied or seized by the Sheriff from the date of the service of the interrogatories on such garnishee; and if the plaintiff in execution relies upon a seizure under his writ, prior to the commencement of his suit in garnishment, he must show an actual seizure of the property in the manner prescribed by law; otherwise such seizure will be of no avail to him.

Rightor et al. v. *Phelps*, 105.

The answers of a garnishee to interrogatories are evidence against the party who propounds them, unless destroyed by the oath of two

GARNISHEE, *(Continued.)*

witnesses, or of one single witness corroborated by strong circumstantial evidence or by written proof.

Cator v. *Merrill & Co.*, 137.

The answers of garnishees are taken to be true, until disproved or contradicted by legal evidence.

Coleman, Britton & Withers v. *Fennimore*, 253.

Answers acknowledging no present indebtedness to defendant, nor any future indebtedness, except contingent upon an uncertain event, will not bind garnishses.

Ibid.

A garnishee having answered categorically all the questions propounded to him, the penalty imposed by the articles 263 and 319 of the Code of Practice cannot be applied to him.

Marks & Co. v. *Reinberg*, 348.

If the plaintiffs have, according to articles 264 and 354, successfully contradicted and falsified the answers of the garnishee; the first of the two articles then opposes its authority and fixes the liability of the garnishee to the amount proved against him, and by no means to the amount claimed, should it exceed the one proved.

Ibid.

Where the evidence does not show an indebtedness to any specific amount, but merely negatives or nullifies the answers of the garnishee, he will not be bound.

Ibid.

A garnishee cannot interfere in the controversy between the original parties, nor plead other defences than those necessary to protect himself. No seizure in his hands can be made under the execution against him without notice to the defendant, who must, after notice, oppose the seizure, or lose all recourse against the garnishee for the payment made by him under the order of the court.

Campbell v. *Myers*, 362.

See ATTACHMENT.

See EXECUTION OF JUDGMENT.

GUARANTOR.

The principle, that notice of the acceptance of a guarantee must be given within a reasonable time in order to fix the liability of the guarantor, cannot be invoked where the acts and declarations of the guarantor amount to a waiver of such notice.

Trefethen et als. v. *Locke et als.*, 19.

HABEAS CORPUS.

See APPEAL.

See PRACTICE.

HUSBAND AND WIFE.

The settled jurisprudence in regard to the wife's paraphernal property is, that the husband is presumed to exercise administration until the contrary be shown; and that *in all cases* the burthen of proof to the contrary is on those who have an interest to contest it.
Breaux, Jr., v. *LeBlanc, Administrator*, 145.

A mere discharge signed by both husband and wife, where the latter acknowledges the receipt of a sum of money, is not sufficient to shift the *onus* of a *negative proof* on the wife.
Ibid.

The incapacity of the wife to contract is removed by the assent of the husband; but this is true only in cases where she can *legally* contract. For example, she can only contract with her husband in certain cases; she cannot, except in certain enumerated cases, dispose of her dotal property; she cannot, when there exists a community of acquests and gains between her and her husband, acquire property for her separate account. To this last rule there are exceptions.
Bouligny v. *Mrs. Fortier and Husband*, 209.

The declarations of a married woman, in the generality of cases, are not binding on her unless verified, or unless she has been benefited by the contract.
Ibid.

The husband is only responsible to his wife for the amount of her paraphernal property alienated, when it is proved that he has received the price or otherwise disposed of the same for his individual interest.
Ibid.

All the effects of the spouses, not satisfactorily established to have been brought into the marriage, or acquired during the marriage by inheritance or by donation made to the one or to the other particularly, constitute the assets of the community or partnership of acquests and gains. We have no doubt that the wife may legally make an exchange of her paraphernal property.
Ibid.

The right of the wife to administer her paraphernal property and to alienate the same implies the faculty of investing or re-investing her paraphernal effects.
Ibid.

All the wife's property which is not declared to be dotal is paraphernal, and the wife has the administration and the enjoyment of it, but she cannot alienate it without the authorization of her husband or of the Judge.
Ibid.

HUSBAND AND WIFE, *(Continued.)*

Under our Code the wife has an action against her husband for the restitution of her paraphernal property.
Ibid.

A wife cannot invest beyond her means, and conveyances made to the wife, on her failure to show adequate means, or maintaining similar conveyances by reason of such adequate means, will be set aside.
Ibid.

The ability of the wife to acquire, during the marriage, property in her own name and for her separate account, is an exception to the general rule, and it must, therefore, be strictly and rigidly construed; and consequently the wife is required, not only to prove that she had paraphernal effects at her disposal, but also that they were ample to enable her, *reasonably at least,* to make the new acquisition, otherwise the contract will be treated as a contract of the community. The converse of the proposition is equally true.
Ibid.

Where the husband administered the paraphernal property of the wife, during the existence of the marriage, he is responsible for the amount of that property alienated by her.
Mrs. Barbet v. *Roth,* 271.

An act, whether authentic or under private signature, is proof between the parties, even of what is there expressed only in enunciative terms; provided, the enunciation have a direct reference to the disposition. So that when the defendant having assisted and authorized his wife in various conveyances of landed property and slaves declared in the acts to be her paraphernal property, the plaintiff was not required, as against the defendant, to prove the verity of the declarations of ownership.
Ibid.

Attorney's fees paid by the community, incurred for the separate account of the wife, should be charged to her estate.
Ibid.

Where interest was paid on a stock loan, the personal debt of the wife, the amount should be charged to the community.
Ibid.

The wife, whether separated in property by contract or by judgment, or not separated, cannot bind herself for her husband, nor conjointly with him, for debts contracted by him before or during the marriage.
Draughon v. *Ryan,* 309.

Where from the evidence it appears that a note was not given for the improvement or benefit of the paraphernal property of the wife, but simply to enable the husband to work a plantation which did not belong to her—*Held:* That the debt is a community obligation.
Ibid.

HUSBAND AND WIFE, *(Continued.)*

The circumstance that the husband had no separate property of his own, does not create an obligation on the part of the wife to satisfy such a claim.

Ibid.

By article 2341, C. C., dotal immovables may be sold "for the purpose of liberating from jail either husband or wife," &c.

Nettles v. *The Sheriff et als.*, 339.

To entitle the plaintiff in execution to levy upon the interest of his debtor in the stock seized, it is necessary to show what interest, if any, the latter may have acquired in his wife's store—her separate property. As there was no community between them, this administration did not vest in him absolutely the fruits and revenues.

Fleytas, wife of Dr. Dupas, v. *Poutz et als.*, 414.

See COMMUNITY.

See DONATIONS.

INCAPACITY.

See CONTRACT.

INJUNCTION.

On the trial of a rule to dissolve an injunction, on the ground that it was issued improvidently and contrary to law, the allegations of the petition are to be taken as true for the purposes of the rule.

Ferriere v. *Schreiber et al.*, 7.

If the plaintiff in execution send a writ to another parish, the District Court of that parish has jurisdiction to issue an injunction on a third opposition, and to try the question raised by it, although the plaintiff in execution resides out of the parish where the injunction suit is instituted.

Coleman v. *Brown et al.*, 110.

A third opposition without an injunction, in order to have the effect of annulling the sale, must be commenced as an opposition with an injunction, prior to the execution of the writ by a sale of the property seized under it.

Ibid.

Where a writ issues for more than is due, the remedy is by injunction.

Harper v. *Terry*, 216.

An injunction cannot issue without judicial authority, and is within the discretion of the court *a quo*.

The State v. *Judge Third Dist. Court of N. O.*, 233.

The sum of damages for the wrongful suing out of an injunction must be ascertained by the amount enjoined; and when that amount

INJUNCTION, *(Continued.)*

does not appear of record, none will be allowed on appeal, but reserved to the party enjoined.

McCloskey v. *Central Bank of Alabama,* 284.

A jury trial will be refused in cases of executory process on an injunction sued out under articles 739 and 740 of the Code of Practice.

Amacker v. *Smith et als.,* 361.

Where an injunction was sued out by the plaintiff, restraining the defendants from selling her separate property, seized as community property, for her husband's debt; and where a legal separation of property had taken place, charged to have been obtained by collusion—*Held:* That the schedule of insolvent proceedings of her husband against his creditors, was proper evidence to show his embarrassed circumstances, and the validity of her judgment against him.

McMurphy v. *Bell & Haggerty et als.,* 369.

See Appeal.

INSOLVENCY AND INSOLVENT PROCEEDINGS.

Where the creditors of an insolvent have been enriched by an unauthorized act of the syndic, the successor in office of such syndic may be compelled to refund the amount.

Bach v. *Miller,* 44.

Where a creditor placed upon the schedule of an insolvent certifies on oath, either in person or by proxy, his claim to be true and legitimate in the manner required by the Act of 1855, p. 434, § 13, it will entitle him to vote for a syndic; and it is incumbent, *in all cases,* on the complainant to rebut by proper evidence the presumption of indebtedness arising from the sworn declaration of the creditor.

Mercadal Jr. v. *His Creditors,* 82.

In an action for a forced surrender by judgment creditors, other creditors of the insolvent may object to the irregularity of the proceedings.

Letchford & Co. v. *Dannequin & Co. et als,* 149.

To justify an order for a forced surrender, the Sheriff must return the execution endorsed *specifically* "No property found after due demand." It is his duty to seize either partnership effects or property belonging to the individual partners, if he knew of any such.

Ibid.

In a contest between the creditors of an insolvent, the notes or obligations of the insolvent do not make in themselves conclusive proof of the debts apparently due them. They must be supported by such additional evidence of the claim as will satisfy the Judge of its fairness.

Johnson v. *His Creditors,* 177.

Provisional syndics are entitled to one per cent. on the appraised value of the goods and effects confided to them as such.

Spiller & Allen v. *Their Creditors,* 292.

INSOLVENCY AND INSOLVENT PROCEEDINGS, *(Continued.)*

The syndics of an insolvent estate may be entitled to an allowance for the hire of a clerk employed by them, where they allege and prove that extraordinary skill as an accountant was required to unravel complicated accounts, left in confusion by the insolvent. In the absence of such allegations and proofs, the hire of a clerk employed by them must be paid for by the syndics themselves.

Ibid.

A provisional syndic was condemned to pay to the syndic a certain amount over $300 in his hands belonging to an insolvent estate, or be imprisoned until paid.—*Held:* That he could take a suspensive appeal according to articles 565 and 575 of the Code of Practice. The mere fact that proceedings are conducted in a summary manner has no influence on the *right* of appeal.

State v. *Judge 4th District Court of N. O.*, 416.

See Privilege.

INSURANCE.

A policy and the indorsement thereupon should be construed together, unless they are so much in conflict that they cannot be reconciled, in which case the indorsement should govern. Alterations made by either party with the consent of the other are valid; and almost any change as to parties, or terms, may be made by indorsement with consent.

Howes v. *Union Insurance Co.*, 235.

If a policy does not state the agreed value of the property insured, but leaves that for proof, it is called an open policy, but if the policy states what the parties have agreed upon as the value of the property, it is called a valued policy; and, in general, this agreed estimate and valuation is final and conclusive upon both parties. The exceptions to this general rule are, that a wager policy, an insurance without interest, an evaluation out of all proportion, with intent to defraud, and fraudulent representations and concealments, vitiate the instrument.

Ibid.

Where the plaintiffs make out a *prima facie* case, it is incumbent upon the defendant to show that they have made a fraudulent exaggeration of their loss, otherwise the verdict of the jury will not be disturbed.

Guma & Co. v. *Hope Ins. Co. of N. O.*, 415.

When the policy compels the assured to labor for the protection of the goods, and they are injured or stolen in the attempt to avoid the fire, the insurer is responsible.

Talamon & Co. v. *Home and Citizens' Ins. Co.*, 425.

See Damages.
See Privilege.

INTEREST.

Money paid for usurious interest cannot be recovered in a court of justice.

Spurlin v. *Milliken*, 217.

Where a certain per cent. is charged for money advanced, and conventional interest is also stipulated, the contract is tainted with usurious interest, and the principal only can be recovered.

Payne & Harrison v. *Waterston*, 239.

See BILLS OF EXCHANGE, &c.

INTERROGATORIES ON FACTS AND ARTICLES.

Where answers to interrogatories are not responsive, they will be taken for confessed.

Walker v. *Wingfield*, 30.

The answer of one of the parties to the suit to interrogatories on facts and articles may be made use of by either party on the first or any subsequent trial of the cause.

Bachemin v. *Widow Sheixnaydre*, 32.

A party cannot be made to answer interrogatories if his answer will expose him to any criminal punishment *or penal liability.*

Shepherd v. *Payson*, 360.

See GARNISHEE.

INTERVENTION.

See ATTACHMENT.
See JUDGMENT.
See PLEADING.
See PRACTICE.

JUDICIAL ADMISSION.

See EVIDENCE.

JUDGMENT.

Errors of judgment must be corrected in the court below.

Johnson v. *His Creditors*, 177.

A judgment dissolving the injunction and directing the Sheriff to sell, on the twelve months bond, and ordering the plaintiff to pay the like amount *in solido* with two other persons, is a double judgment against the same party for the same debt, *ultra petitionem*, and will be reversed.

Hennen v. *Word et al.*, 263.

The force and effect of a judgment is to be determined by reference to the state of things existing at the time of its rendition.

Bonvillain v. *Bourg, Sheriff, et al.*, 363.

The plea of *res judicata* is to be decided by reference to the matters put at issue by the pleadings. So a general and *prima facie* absolute

JUDGMENT, *(Continued.)*

judgment against the defendants is to be construed *secundum allegata;* and where they are sued as attorneys in fact, such judgment does not bind them personally. In like manner a general judgment against parties sued as commercial partners is virtually one *in solido.* A judgment against a third possessor is not a judgment *in personam.*

Ibid.

Where a *causa superveniens,* the severance of the marriage tie, occurs, property (dotal) previously inalienable will be subject, like all other property of the defendant, to seizure and sale under execution.

Ibid.

See Damages.
See Execution of Judgment.
See Prescription.

JURIES AND JURORS.

Where the charge of the District Judge to the jury is such as to mislead the jury upon the facts, the verdict will be set aside, and such judgment rendered on the appeal as the evidence justifies.

Möller v. *Gauche,* 43.

Where irrelevant testimony is admitted, and does not justify the verdict of the jury, it will be set aside, and the case remanded for a new trial.

Walpole v. *Renfroe,* 92.

A jury trial will be refused in cases of executory process on an injunction sued out under articles 739 and 740 of the C. P.

Amacker v. *Smith et als.,* 361.

JURISDICTION.

See Criminal Law.

LAND TITLES.

The Act of Congress approved July 6th, 1842, entitled "An Act confirming certain land claims in Louisiana," embraces, "that the confirmation made by virtue of the 7th and 9th sections thereof shall only operate as a relinquishment of the right of the United States, and shall not affect the right of third persons, nor preclude a judicial decision between private claimants for the same land.

Cannon v. *White,* 85.

Where the title to public land has passed from Congress, and forms no longer part of the public domain, the pretensions of the litigants must be determined by our State laws and jurisdiction.

Ibid.

The issuing of a patent for land by the United States does not affect any rights subsisting between third persons and the patentee, grow-

LAND TITLES, *(Continued.)*

ing out of contracts in relation to the land covered by the patent. The patent, to whomsoever issued, inures to the benefit of the party to whom the patentee is bound to convey it, or for whose use he ought in law to hold it.

Hennen v. *Wood et al.*, 263.

A surety has no interest in inquiring into a suit further than to be assured of his subrogation when he makes payment. He, therefore, cannot complain of irregularity in the proceedings when they do not affect *him*.

Ibid.

In 1844, the Secretary of the Treasury, Judge Bibb, decided that patents ought to issue to those holding the Houmas claim for the lands between those already patented and the Manchac; but on the 7th of January following, Congress, by a Joint Resolution of both Houses, prohibited the issuance of evidence of title upon that "Spanish land claim."

Laforest v. *Downing*, 301.

In the case of *Carroll* v. *Safford*, 3 Howard, 46, the Supreme Court of the United States decided that lands when *sold*, are no more the property of the United States than lands *patented*.

Ibid.

LAWS, REPEAL OF.

The repeal of a repealing law does not revive the first law, unless it be so particularly expressed by the legislator.

Witkouski v. *Witkouski*, 232.

Whenever the provisions in the Code of Practice are contrary or repugnant to those of the Civil Code, the latter shall be considered as repealed, and the former recognized as the law of the case. But when laws *in pari materia* are to be interpreted, that construction is to be preferred which will give effect to all their provisions, for the reason that the law does not favor repeals by implication.

Desban v. *Picket*, 350.

The Act of 1828 repealed the whole body of the Spanish laws which remained in force after the promulgation of the Code of 1808.

Widow Nixon v. *Mrs. Piffet et als.*, 379.

Subsequent laws do not repeal former ones by containing different provisions: they must be contrary.

Ibid.

See Public Lands.

LETTING AND HIRING.

Damages cannot be awarded against the landlord for suing out a pro-

LETTING AND HIRING, *(Continued.)*

visional seizure of the effects of the tenant, where the seizure has been maintained as legal.

Murphy & Wife v. *Redler*, 1.

The Article 2720 of the Civil Code, which declares "*If without any serious ground of complaint, a man should send away a laborer whose services he has hired for a certain time, before that time has expired, he shall be bound to pay such laborer the whole of the salaries he would have been entitled to receive, had the full term of his services arrived,*" is in the nature of a penal statute, must be strictly construed, and cannot be applied to the case of a contract for letting and hiring entirely unperformed in all its parts. In such case only the actual damages sustained by reason of the non-performance of the contract can be recovered.

Trefethen et als. v. *Locke et als.*, 19.

Laborers who hire themselves out to work on plantations, or to work in manufactures, have not the right of leaving the person who has hired them, nor can they be sent away by the proprietor, until the time has expired during which they had agreed to serve, unless good and just causes can be assigned. In the latter case an action for breach of contract, according to articles C. C. 1920, 1924, is the only remedy.

Word v. *Winder*, 111.

The abandonment of service, even for a day, gives the employer a right to dispense with the employee's further services.

Ford v. *Danks*, 119.

The tenant of a predial estate cannot claim an abatement of the rent, under the plea that during the lease either the whole or part of his crop has been destroyed by accidents, unless those accidents are of such an extraordinary nature that they could not have been foreseen by either of the parties at the time the contract was made, such as the ravages of war extending over a country then at peace, &c. The overflow of the Mississippi River is of such frequent occurence that it does not come within the above category. A crevasse itself cannot be considered as an "extraordinary accident."

Vinson v. *Graves*, 162.

In a suit on a *quantum meruit* the lowest sum, *that the evidence will justify*, does not necessarily mean the lowest that has been mentioned by any of the witnesses. It is the evidence, taken as a whole, which is submitted to the consideration of the Judge.

Holley v. *Borland*, 186.

Where the incompetency and negligence of an overseer is put at issue in the pleadings, on a suit for wages, evidence must be received to establish the fact.

Webre v. *Gallaird*, 189.

LETTING AND HIRING, *(Continued.)*

A person employed to retain possession for the owner, cannot be permitted to defeat the object for which he was employed, and the moment he resists the entry of the owner he becomes a trespasser. 12 An., 687.

Ella Looram, wife of Pujol, v. *Burlingame,* 199.

Per curiam: It would be difficult to prove, as a legal proposition, that the tenant, after the termination of his lease, and after he had left the premises, could maintain a civil possession and prevent the entry of the owner by leaving a few effects and carrying away the keys; for the possession of the tenant is that of the owner. C. C. 3396, 3404, 487. When, therefore, he abandons the property, it would seem he ceases to possess and cannot prevent the lawful owner, his landlord, from entering.

Ibid.

A party plaintiff is only entitled to recover the actual damage sustained by him in consequence of the defendant's violation of the contract of lease.

D'Armand v. *Pullin,* 243.

A livery stable keeper who rents stalls to another, who finds his own employee, and provender for his horses, is not liable if the latter be lost or stolen.

Berry v. *Marix,* 248.

The lessor has a right of pledge on the movable effects of the lessee, which are found upon the property leased, and may even seize them within fifteen days after they are taken away, *if they continue to be the property of the lessee,* and can be identified, for the payment of his rent.

Desban v. *Pickett,* 350.

LEVEES.

Where a levee is erected for the benefit of and by the plaintiff himself, and of no peculiar benefit to the general plan by which the whole district was to be protected—*Held:* That there is no ground for a recovery against the Board of Levee Commissioners in the shape of compensation. Casualties arising from the partial failure of the levees at any point, cannot have the effect of releasing the land owner from the payment of the levee tax.

Templeton v. *Morgan, Collector,* 438.

See Damages.
See Public Officer.

MALICIOUS PROSECUTION.

To recover damages for a malicious prosecution, the plaintiff must show that the prosecution was instituted maliciously and without probable cause, and both these must concur.

Murphy and Wife v. *Redler,* 1.

MALICIOUS PROSECUTION, *(Continued.)*

Malice and a want of probable cause must, in all cases, concur, in order to make out a case of malicious prosecution.
Robertson v. *Spring*, 252.

MANDAMUS.

A *mandamus* will not lie against a Judge *a quo* to compel him to allow an appeal on a judgment refusing a *mandamus* to compel a Justice of the Peace to issue a commission to take testimony. The remedy is by appeal to the District Court, and ultimately to this Court, when the amount gives such appellate jurisdiction.
The State v. *The Third District Court of New Orleans*, 185.

See Appeal.

MANDATE.

A mandatory acting for himself as well as others cannot recover on a *quantum meruit*. The procuration is gratuitous unless there has been a contrary agreement.
Wilson v. *Wilson*, 155.

The mandatory has a right to retain, out of the property of the principal in his hands, a sufficient amount to satisfy his expenses and costs; creating a right of pledge.
Hereford and Wife v. *Leverich, Curator*, 397.

See Prescription.

MARRIED WOMEN.

In order to constitute a married woman a public merchant, within the meaning of Art. 128 C. C., it is not merely necessary to show that her name has been used in conducting the business of a particular trade, but it must also appear that she has had some active agency in the business which is thus conducted in her name.
Christensen, wife of, &c., v. *Stumpf*, 50.

A married woman may, with the authorization of her husband, become a surety for a third person when the debt for which she becomes surety is neither the debt of the community nor of the husband.
Barrington, Adm'r, v. *Bradley et al.*, 310.

See Contracts.
See Husband and Wife.

MINORS.

A party permitted by an Act of the Legislature to adopt a minor, cannot appoint a testamentary tutor to such adopted minor to the exclusion of the natural father.
In Tutorship of Ellen W. Upton, 175.

The parent cannot retain the usufruct of the estate of the minor which he may acquire by his own labor and industry, or which is left to

MINORS. *(Continued.)*

him under the express condition that the father and mother shall not enjoy such usufruct. C. C. 242.

Oublier v. *His Creditors*, 287.

MONITION.

See Taxes, Tax Sales, &c.

MORTGAGES.

One who assumes to pay a mortgage debt by notarial act is not, properly speaking, a third possessor who can discharge himself by abandoning the property.

Mrs. Boissac v. *Downs*, 187.

A tacit mortgage exists without any record in the office of the Register of Mortgages, and it binds the real property of the tutor in every parish in the State.

Ibid.

If a person contracting an obligation towards another, grants a mortgage on property of which he is not then owner, this mortgage shall be valid, if the debtor should ever after acquire the ownership of the property, by whatever right.

Amonett, Ex'r, v. *Amis et al.*, 225.

Future property can never be the subject of conventional mortgage.

Ibid.

The thing claimed as the property of the claimant cannot be alienated, pending the action, so as to prejudice his right. If judgment be rendered for him the sale is considered as a sale of another's property, and does not prevent him from being put in possession by virtue of such judgment.

Barelli v. *Delassus et als.*, 280.

The services and incorporeal rights that the third possessor holds on the property before its possession, are renewed after its relinquishment or after the sale in execution made upon him. His own creditors, after those who held their titles under the preceding proprietors, exercise their rights of mortgage in their order, on the property relinquished or sold at auction.

Ibid.

A party who institutes the hypothecary action, cannot interfere with the right of the defendant, as owner, to alienate the property during the pendency of suit.

Ibid.

To have effect against third persons, mortgages must be reinscribed after the lapse of ten years, notwithstanding the pendency of suit.

Ibid.

A mortgage granted by the maker of a note, to one who endorses the

MORTGAGES, *(Continued.)*

note for the maker's accommodation, to secure him against liability, is not an accessory to the principal obligation, but simply a personal indemnity depending on the payment of the note by the endorser.
Spiller & Allen v. *Their Creditors*, 292.

Subrogation takes place of right for the benefit of him who, being himself a creditor, pays another creditor, whose claim is preferable to his, by reason of his privileges or mortgages.
Ibid.

In hypothecary actions the delay for a suspensive appeal commences to run from the date of service of the notice of the order of seizure and sale, which is notice of judgment to the possessor of the hypothecated property.
State v. *Judge Second Dist. Court of N. O.*, 390.

The notice required, of course, is a *legal* notice; and a verbal notice by a friend, or a notice served upon an unauthorized person, is, in the eye of the law, no notice.
Ibid.

A curator *ad hoc* must be appointed for a mortgagor who is absent when executory process is sued out against the property mortgaged.
Ibid.

A mortgage is a real right, a *jus in re*, which, in general, so far as third persons are concerned, can only be created by an observance of the forms of law. Like the sales of real estate, it is necessary that it should be properly recorded. Third persons, without actual notice, are not bound to look beyond the registry; and they may in good faith lawfully acquire from the holder of such right, all his interest which appears on the books of the office.
Carpenter v. *Allen et al.*, 435.

NEW ORLEANS.

The municipal authorities of New Orleans are invested with power to establish public markets.
Cougot v. *City of N. O.*, 21.

At the time of the lease of the Treme Market an addition or prolongation of the market-house was being constructed by order of the City, which addition was not included in the lease—*Held:* That on its being completed, the City had the right to lease it as a separate public market from that of Tréme, and no action for damages would lie in favor of the lessee of Tréme Market.
Ibid.

A *negotiorum gestor* has the right to be refunded the taxes assessed on the property and paid by him during the continuance of his possession; though no privilege exists therefôr.
Succession of James Erwin, 132.

NEW ORLEANS, *(Continued.)*

The privilege of the City of New Orleans for taxes extends only for two years.
Ibid.

On a re-hearing:—A contractor by municipal authority has no right of action against the proprietor for filling up lots in the City of New Orleans, unless he shows that the contract was adjudicated to him as the lowest bidder, in pursuance of the 22d section of the Act of the 21st March, 1850.
Ibid.

A sanitary commission, appointed by the Board of Health, cannot recover for services rendered the Board; that Board had no authority to establish a commission. If they acted as agents for the city the Court presumed that their services were rendered gratuitously; if they acted as officers for the city, they then accepted a public trust to which neither fees nor emoluments were attached by any ordinance of the city.
E. H. Barton et al. v. *N. O.*, 318.

Where *one-fourth* of the owners of lots fronting on a street do not join in a memorial to have the street paved, the Common Council have no right to contract for its paving; and such a contract will be invalid against the property-holders.
McGuinn v. *Peri*, 326.

By extending the privilege of breaking up flatboats on a certain part of the levee it does not follow that the prohibition to do so in any other part of the city has been withdrawn. An extention of privilege in one place does not yield it in another.
The Ursuline Nuns v. *Fresch*, 359.

See CRIMINAL LAW.

NEGOTIORUM GESTOR.
See NEW ORLEANS.

NOVATION.

Novation does not take place unless by the terms of the agreement or a full discharge of the original debt.
McRae v. *His Creditors*, 305.

See SALE.

NULLITY.

The purchase of one's own property is null.
Alderson v. *Sparrow*, 227.

OBLIGATIONS.

No suit will lie to recover back what has been paid or given in compliance with a natural obligation.
Spurlin v. *Milliken*, 217.

OBLIGATIONS, *(Continued.)*

The loss of an obligation sued upon must be proven before secondary evidence can be received of its import.

Perkins v. *Bard et al.*, 443.

OFFENCES AND QUASI OFFENCES.

See PRESCRIPTION.

OPPOSITION.

See PLEADING.
See PRIVILEGE.

PARTITION.

A debt to the succession, not yet due, is susceptible of partition.

LeBlanc v. *Bertan et als.*, 294.

See SUCCESSIONS.

PARTNERSHIP.

Notice of the retirement of a partner from the firm, published in a newspaper to which the customer of the firm is a subscriber, is not legal notice to such customer of the dissolution of the firm. As to persons previously in the habit of dealing with the firm, actual notice of the dissolution must be brought home to them, which is usually done by circular letters addressed to the creditors of the partnership.

Reilly et al. v. *Smith Jr.*, 31.

Actual notice cannot be inferred from the mere fact of the creditor being a subscriber to the newspaper in which the notice was published.

Ibid.

The mere fact that one of the partners acts as the cashier of the firm, would not, as a general rule, charge him with the funds he might receive and disburse in the course of business; otherwise when fraud is charged.

Walpole v. *Renfroe*, 92.

If a debt be contracted by one of the partners of an ordinary partnership, who is not authorized, either in his own name or that of the partnership, the other partners will be bound, each for his share, provided it be proved that the partnership was benefited by the transaction. Each is bound in proportion to the number of partners, without any attention to the proportion of the stock or profits each is entitled to. But where the recourse of the creditor is had on account of the benefit conferred by the partnership, by a contract not its own, the rule is different, and each partner's share is to be fixed in proportion to the interest which he has in the concern and to the benefit which in consequence he has derived.

Lallande v. *McRae et als.*, 193.

PARTNERSHIP, *(Continued.)*

The right of the creditor does not arise under the contract, which, as such, is not binding on the partnership: his action against each partner has for its basis the benefit conferred. But to such a right springing from equity cannot attach a mortgage which is itself a matter of strict right.
Ibid.

Partnership creditors are not entitled to a mortgage on the partnership property, nor can a special mortgagee be compelled to seek payment on one rather than another part or portion of the property mortgaged. The right attaches to all the property.
Ibid.

The books of a liquidating partnership are in the *quasi* possession of the law, and must be placed in the hands of the Receiver under all circumstances.
Succession of Andrew, 197.

On the death of a partner his interest in the assets of the firm become vested in his heirs at law, and the surviving partners can only acquire that interest by transfer or assignment from the heirs, and thereby acquire a right to sue for a debt in their own name.
Skipwith & Osborne v. *Lea*, 247.

Every partner may, without the consent of his partners, enter into partnership with a third person for the share which he has in the partnership; but he cannot, without the consent of his partners, make a partner in the original partnership, should he even have the administration of it.
Freligh v. *Miller et al.*, 418.

Every partner owes to the partnership all that he has promised to bring into the same. Who promises to bring into the partnership a certain thing, is bound, in case of eviction of it, in the same manner as a seller towards the purchaser who buys from him.
Ibid.

See Appeal.
See Community.
See Corporations.
See Executors and Administrators.

PAYMENT.

When the receipt bears no imputation, the payment must be imputed to the debt which the debtor had at the time most interest in dicharging, of those that are equally due, otherwise to the debt which has fallen due though less burthensome than those which are not yet payable.
Spiller & Allen v. *Their Creditors*, 292.

If the debts be of a like nature, the imputation is made to the less burthensome; if all things are equal, it is made proportionally.
Ibid.

PAYMENT, *(Continued.)*

The extinguishment of a debt by payment must be shown by *reasonable certainty.*

Succession of Moreira, 368.

Payment must be imputed to that debt which the debtor had most interest in discharging.

Miller & Co. v. *Steamer Trahue et al.*, 375.

PLEADING.

The exception of *lis pendens* is only admissible when another action is pending between the same parties, for the same object and growing out of the same cause of action, before the same tribunal or one of concurrent jurisdiction. It is necessary that the parties to the suit pleaded as *lis pendens* should be the same, otherwise the exception should be overruled.

Hacket v. *Lenares et al.* 204

A party who voluntarily executes the judgment of a Jockey Club against him cannot afterwards come into Court and reclaim the amount so paid.

Bingaman v. *Cocks et als.*, 249.

The oath appended to an answer demanding a jury trial on a promissory note, is not proof, and does not change the character of the pleadings.

Pack and Wife v. *Chapman*, 366.

It is incumbent for a party, on pleading the want of consideration, to prove it. The *onus* is not upon the plaintiff.

Ibid.

See COMPENSATION.
See PRACTICE.

PLEDGE.

Under articles 3191, 3192, and 3193 of the C. C. a right of pledge exists for the keeping and feeding of horses, and a privilege upon the proceeds of their sale.

Olivia Andrews v. *Crandell, Sheriff, et al.*, 208.

POLICE JURY.

Police Juries of the several parishes of this State have not the power to confiscate and sell cattle running at large and belonging to citizens residing out of the parish.

Martha Halloway v. *Police Jury et al.*, 203.

The Police Juries in the assessment of taxes on personal and real property cannot discriminate between citizens and non-residents of the parish—they are not at liberty to tax the property of non-residents higher than that of citizens of the parish—but, on the contrary, they are required in the exercise of the power of taxation to levy

POLICE JURY, *(Continued.)*

an equal and uniform tax on every species of property and on all trades and professions, in their respective parishes, which have been made the subject of taxation by the Legislature on behalf of the State.

Ibid.

An ordinance of a Police Jury making such a distinction as afore-mentioned, between the property of citizens and non-residents of the parish, is absolutely null and void.

Ibid.

PRACTICE.

Where the defendant does not urge, in this Court, any of the bills of exception taken by him to the rulings of the court below, it will be considered a waiver of those exceptions.

Cannon v. *White,* 85.

The death of a party to a suit is no cause for its dismissal: the survivors of the partnership or the legal representatives of the deceased may be made parties on petition.

Todd & Co. v. *Young,* 162.

Where the allegations of the petition were insufficient to admit proof of the agency with the right of the agent to stand in judgment and receive citation for his principal, the case will be remanded for a new trial.

Aldigé & Co. v. *Knox & Pugh et al.,* 180.

Where the domicil of the defendant is known, citation must be addressed to him there.

Ibid.

A *mandamus* will not lie against a Judge *a quo* to compel him to allow an appeal on a judgment refusing a *mandamus* to compel a Justice of the Peace to issue a commission to take testimony. The remedy is by appeal to the District Court, and ultimately to this Court, when the amount gives such appellate jurisdiction.

The State v. *The Third District Court of New Orleans,* 185.

When a Court usurps jurisdiction the proper remedy is by the writ of prohibition.

Ibid.

It is not in the authority of a court to appoint *ex parte* a Receiver of assets belonging to a partnership. A writ of sequestration, or a rule upon the defendants to concur in the appointment of a Receiver by the parties, would be the proper remedies.

Martin et al. v. *Blanchin et al.,* 237.

Where the plaintiff resides out of the State, or in the State, but in a different parish from the defendant, the latter may institute against the former a demand in reconvention for any cause, even for such as are not connected with or incidental to the principal demand.

Spinney v. *Hyde & McKie,* 250.

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PRACTICE, *(Continued.)*

The right of this Court to issue writs of *habeas corpus* extends only to cases where the parties are in actual custody under process, in all cases in which it may have appellate jurisdiction. It does not extend to the authority of taking a child from the custody of its parents.
Manouvrier and Wife praying for a writ of Habeas Corpus, 257.

A judgment homologating an administrator's account and discharging the administrator, rendered upon publication made pursuant to Art. 1172 of the C. C., is not *res judicata* as to the heirs. That form of notice is meant merely for creditors. The heirs should have been cited.
Succession of Yarborough, 258.

An error of fact, whether proceeding from fraud or not, is always subject to re-examination at the instance of the party aggrieved by the error.
LeBlanc v. *Bertant et als.*, 294.

A party cannot be controlled in the order in which he chooses to offer his proofs.
Mrs. Gordon v. *Millaudon*, 347.

See Attachment.
See Bills of Exchange, &c.
See Contracts.
See Courts.
See Executors and Administrators.
See Injunction.
See Mortgages.

PRESCRIPTION.

A judgment of nonsuit rendered on motion of defendant's counsel, when the counsel for the plaintiff declines to go into the case, is not such an abandonment of the demand as is contemplated by Article 3485 of the Civil Code, and prescription is considered as interrupted during the pendency of the action.
Price et al. v. *Emerson*, 95.

The action to rescind a sale for non-payment of the price is prescribed by ten years. The court has the right to grant some indulgence to the debtor, provided it does not exceed six months.
Hunter v. *Williams*, 129.

A claim for damages, *ex delicto*, is prescribed by one year.
Harris v. *N. O., O. & G. W. R. R. Co.*, 140.

The right of action on a letter of credit is prescribed by the lapse of ten years; on account for moneys advanced it is prescribed by the lapse of three years.
Regis v. *Hébert, Administrator*, 224.

PRESCRIPTION, *(Continued.)*

The factor, agent, or correspondent, to whom a letter of credit is directed, and who furnishes the person named with the amount of money specified, stands in the relation of a drawee of a bill of exchange, to the merchant who gives said letter, and so soon as he advances or furnishes the amount of money specified, the letter of credit, like a bill of exchange paid by the drawee, becomes extinguished, and the right of action lies upon an account for moneys advanced, and not on the letter or order to furnish the money; and it is barred by the lapse of three years.

Ibid.

A note specially endorsed by the payee to one person will be prescribed by five years when there is not sufficient evidence to establish a *new promise.*

Penn v. *Crawford,* 255.

The defendant stated on the first presentment that "he thought the note had been settled, but if not, he would arrange it"; and on the second presentment he stated that "he would see the plaintiff and settle the amount of the note."—*Held:* That this evidence is too doubtful, uncorroborated, to interrupt prescription.

Ibid.

The prescription for a merchant's account is three years.

Succession of Yarborough, 258.

Actions for torts, injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offences or quasi-offences, are prescribed by one year.

White v. *Maguire et als.,* 338.

The hypothecary action against the third possessor, who holds in good faith, by a title translative of property, is prescribed by the lapse of ten years. C. C. 3442; 11 L. R. 256.

Adlé et als. v. *Prudhomme and Wife,* 343.

A change of residence openly and publicly made from one part or State of our common country to that of another, cannot be considered an act on the part of the debtor which suspends prescription, and creates a proper case for the application of the maxim, *contra non valentem agere non currit prescriptio;* and the fact of his pecuniary embarrassments at the time of such removal, does not *per se* vary the case.

Canal Bank v. *Beard,* 345.

Whenever it is necessary to enforce a judgment by a separate and distinct action from the one in which judgment was rendered, the right to such action, it being a personal action, is prescribed, under article 3508 of the Code, by ten years.

Succession of Beckham, 352.

PRESCRIPTION, *(Continued.)*

The necessity of instituting a separate action to enforce a judgment exists in two cases:—the first, when the judgment is a foreign judgment; the second, when it is a domestic judgment, but the judgment debtor has died and his estate is under administration.

Ibid.

The prescription of a foreign judgment commences running from the date of the judgment. In the case of a domestic judgment, it commences running from the death of the debtor.

Ibid.

Judgments are not barred, *under the statute of April 30th*, 1853, before the lapse of ten years from its promulgation.

Ibid.

The articles of the Code 3501 and 3502 fix the prescription resulting from offences and quasi-offences at one year from the time when the *damage* is sustained. The plaintiff can only be entitled to the damages actually proven.

Mestier v. *N. O. O., & G. W. R. R. Co. et al.*, 354.

An action arising out of a contract of mandate is barred by the prescription of ten years.

Hereford & White v. *Leverich Curator*, 397.

See Absentee.

See Servitudes.

PRINCIPAL AND AGENT.

An agent cannot be permitted to assume duties and trusts incompatible with his agency, nor validly exercise such agency after he has acquired an interest adverse to his principal.

Knabe et al. v. *Ternot et als.*, 13.

Where the object of a contract of mandate made in the city of New Orleans, was the collection of debts due by a debtor residing in another State, or whose succession had been opened in another State; and to effect that object, the mandatory was empowered to purchase lands in the State of the debtor's residence, for the account of the principals—the titles to be taken in the name of the mandatory, and titles to be by him subsequently made to the principal—*Held:* That in a suit here by the principals against the agent, for an account of his agency, the conveyance of the lands by the agent to his principals, as provided for in the contract, is clearly an incident of the account to be rendered, and as such is a proper matter for a decree of the Louisiana court, which being competent to entertain the *actio mandati directa*, is competent to pass upon all incidents and accessories of that action.

Nicholson's Heirs et al. v. *D. N. Hennen*, 33.

In a suit against an attorney in fact, for an account of his agency, all the principals in the contract should be joined in the action. The

PRINCIPAL AND AGENT, *(Continued.)*

attorney cannot be held to render as many accounts of his agency as there are principals in a joint contract.

Ibid.

Where no complaint has been made in regard to the manner in which an agent's duties have been performed, he is presumed to have acted within the sphere of his authority.

Ford v. *Danks*, 119.

When the intent of the parties is doubtful, the construction put upon it, by the manner in which it has been executed by both, or by one with the express or implied assent of the other, furnishes a rule for its interpretation.

Williams, Executrix, v. *McHatton*, 196.

The merchant is but the agent of his principal, and he is bound to account in good faith for all sums made from contracts entered into on behalf of his principal. The law will not permit him to make a profit out of such contracts.

Payne & Harrison v. *Waterston*, 239.

Where there is a special contract which fixes a contingent compensation, a party cannot recover on a *quantum meruit.*

Spear v. *Gardner & Densler*, 383.

The principal may revoke his power of attorney whenever he thinks proper, and, if necessary, compel the agent to deliver up the written instrument containing it, if it be under private signature.

Ibid.

See Corporations.
See Mandate.
See Prescription.

PRIVILEGE.

Privileges cannot be acquired by suits or seizures after a surrender made by a debtor to his creditors; and the creditor on whose opposition to the tableau of distribution a reduction is ordered of the amount allowed by the syndic as counsel fees, cannot claim the exclusive benefit of such reduction.

McIntosh et al. v. *Merchants' & Planters' Ins. Co.*, 12.

Privileges are *stricti juris*, and can only exist by an express law creating them.

Gause v. *Bullard*, 107.

Persons who have advanced money towards the purchase of slaves, or consignees or commission agents who have furnished funds for a like object, acquire no privilege thereby under Article 3214 of the Civil Code as amended. Nor do such advances *per se* create any privilege on slaves under our existing laws.

Ibid.

PRIVILEGE, *(Continued.)*

The provisions of our own laws are to be alone consulted for the existence and enforcement of privileges.
Ibid.

The class of oppositions by which the property of the thing seized is claimed, is a distinct suit; not so the opposition which merely asserts a lien or privilege superior to that of the seizing creditor.
Càtor v. *Merrill & Co.*, 137.

The privilege of a commission merchant or factor is two-fold: first, for advances specially made upon the goods which are seized; and second, for a general balance of account.
Ibid.

A vendor's privilege does not apply to contracts made in a State where no such privilege exists; even if a portion of the goods were in New Orleans at the time of the contract—movables having no *situs*, as a general rule.
Brent, Son & Co. v. *Shouse et al.*, 158.

The vendor's privilege on movables is unknown to the Common law.
Ibid.

Paragraph 2d of article 3184 of the Civil Code, giving a privilege on movables to a workman or laborer for the price of his labor on the movable which he has repaired or made, if the thing continues in his possession, applies only to him who has contracted to do the work, and not to journeymen and other mechanics whom he has employed to work under him.
Landry v. *Blanchard, Sheriff, et al.*, 173.

Privileges are *stricti juris* (C. C. 3152), and the party claiming them must point to the express law which gives him such right of preference on account of the nature of the debt.
Ibid.

Debts due for necessary supplies furnished to any farm or plantation, are privileged on the product of the last crop, and the crop at present in the ground.
McRae v. *His Creditors*, 305.

A repairer of carts, wagons, &c., has no privilege upon the proceeds of the sale of *a plantation* on which they were used.
Ibid.

An overseer has no privilege on the crop of the year subsequent to his services, unless the crop was *in the ground*.
Ibid.

An engineer has no privilege by the Code, and a seizure gives him none. The creditor of an insolvent cannot litigate his demand for a privilege in a separate suit against the syndic.
Ibid.

The creditor cannot be allowed two privileges on the same thing, so as to draw a double dividend from two different funds. Workmen,

PRIVILEGE, *(Continued.)*

and persons furnishing materials, have no privilege when their claim is over $500 and the agreement has not been reduced to writing and registered with the Recorder of Mortgages.

Ibid.

See New Orleans.

See Pledge.

PUBLIC LANDS.

Priority of right gives priority of title in the case of a conflict between a prëemption claim and the location of an internal improvement land warrant, on lands granted to the States by Congress.

Ellis v. *Old*, 146.

The Act of Congress of the 19th of June 1834, reviving the Act of the 29th of May 1830, must be considered as embracing provisions engrafted on the latter Act by the statute of the 23d of January 1832, under which it was not legal to assign or transfer a certificate of purchase from the Register of the Land Office, previous to the issuing of the patent.

Steinspring et al. v. *Bennett & Sprague*, 201.

A patent, to whomsoever issued, inures to the benefit of him to whom the patentee would be bound to make conveyance of the legal title.

Ibid.

Where a party purchases from another his interest in certain land, and a patent is obtained therefor, the former is merely an equitable owner; and as the patent by fiction of law refers back to the day of entry and takes date with it, the sale of his interest was the sale of the land itself. 21 Howard, 240.

Ibid.

Improvements upon public lands cannot form the object of a contract, where the party is not in a situation to avail himself of the prëemption laws. Being a trespasser, he cannot claim indemnity for his improvements.

Spurlin v. *Millikin*, 217.

The location of an Internal Improvement warrant, under the Act of Congress of the 4th September, 1841, on land to which a valid prëemption right existed, is void and cannot be rendered valid by a subsequent approval of the land to the State. Priority of right gives priority of title in contests of this kind.

Ludeling v *Vester, Adm'r*, 450.

PUBLIC OFFICER.

A public officer appointed by the Governor during the recess of the Senate, and afterwards confirmed, dates his term from the original appointment, and not from the time of his confirmation, although a new commission then issued.

Shepherd v. *Haralson*, 134.

PUBLIC OFFICER, *(Continued.)*

Sworn public officers not charged with fraud must be supposed, until the contrary be shown by cogent proof, that they have properly exercised the discretion vested in them by law.
Templeton v *Morgan Collector*, 438.

A collector of levee tax is a public officer whom the District Judge is bound to know the identity of, and his signature. He acts as such without any pecuniary interest to disqualify him from the trust.
Ibid.

In the absence of any special provision of law as to the manner in which the levee-tax collector should make the sales of the property of delinquent tax payers, recourse must be had to other laws *in pari materia.*
Ibid.

See Levees.
See Sale.

PUBLIC USE, DEDICATION TO

The intention to dedicate to public use must be signified in a manner not liable to donbt or misconstruction, by something more than symbols of uncertain import or fanciful adornments with which it has pleased a draughtsman to decorate a plan of property. *Nemo facile presumitur donare.*
Heirs of David v. *New Orleans*, 404.

Words indicative of an intention to give should be found on the plan in order to clothe it with such an effect. The public should accept the dedication by using the ground for the purposes indicated.
Ibid.

A market-house is not necessarily public property; it may be the object of individual ownership.
Ibid.

RESCISSION.

See Sale.

RECONVENTION.

Damages incident to the institution of a suit for the recovery of any civil right cannot, as a general rule, be recovered upon a demand in reconvention.
Harris v. *N. O., O. & G. W. R. R. Co.*, 140.

See Damages.
See Pleading.
See Practice.

REDHIBITION.

In redhibitory actions, the conjectural opinions of physicians without any *post mortem* examination are not of themselves sufficient evidence to establish the origin of the disease of which the slave died.
Parlange & Co. v. *Parlange & Co.*, 17.

REDHIBITION, *(Continued.)*

The redhibitory action cannot be maintained where the latent defect or vice of character of the slave sold is brought home to the knowledge of the purchaser, and the sale was made with a guarantee of title only.

Bell v. *Lacy & Co.*, 51.

The presumption which arises, under article 2508 C. C., from the appearance of a malady in a slave within three days immediately subsequent to the sale, will give way to direct evidence or to opposite presumptions of a controlling character; but the vendor must make out more than a speculative and possible case. The opinion of a physician who never saw the slave, as to the sudden appearance of the malady in most cases, and as to the probable effect of the atmosphere, coupled with the apparent good health of the slave on the day of the sale, is not sufficient to destroy the legal presumption created by this article.

Gause v. *Bullard*, 107.

REGISTRY.

The law does not require the registry of a tax collector's sales in the office of conveyances out of New Orleans.

Alderson v. *Sparrow*, 227.

The Civil Code of 1825 requires a registry, as regards third persons, of *only* instruments made under private signature. The recording of other acts is provided for by legislative enactments. Acts of 1855, No. 274, p. 335, and No. 285, p. 345. The first of these two Acts is a substantial re-enactment of the 7th section of the Act of 1810, p. 60; and of the 1st section of the Act of 1813, p. 206.

Ibid.

RES JUDICATA.

The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality.

Peyton v. *Enos*, 135, *and Cantrelle* v. *R. C. C. St. James*, 442.

A *mere* dismissal of a rule cannot have any greater effect in the court before which the same has been rendered, than a judgment of nonsuit.

Succession of Andrew, 197.

Therefore, when a rule has been dismissed and a second taken, the defendant cannot plead *res judicata.*

Ibid.

REVENDICATION.

See Action.
See Community.

ROADS AND LEVEES.

See LEVEES.
See PUBLIC OFFICER.

SALE.

Where there is an exclusion of waranty in an act of sale, the vendee, on eviction, can only recover, besides costs, the price which he paid, which will bear interest from the date of the eviction.
Bach v *Syndic of Miller*, 44.

Where a party is cited in warranty, and he neglects to call in his warrantor, in a separate action, he can only recover from his warrantor the costs of the former suit up to the date of the citation.
Ibid.

Where a sale was made without any warranty *or recourse whatever*, the purchaser bought at his own risk and peril, and could not claim restitution.—*Ergo*, the vendor was a good witness and not interested in proceedings *alieunde.*
Cannon v. *White*, 85.

A purchaser in bad faith owes indemnity, and is entitled in law to no other claim for his improvements than those stated in the three first sentences of the C. C. Art. 500.
Ibid.

The title acquired by the vendor of property subsequent to the time of the divestiture of his interest inures to the benefit of his vendee.
Zunts v. *Mrs. Courcelle et al.*, 96.

There can be neither increase nor diminution of price on account of disagreement in measure, when the object is designated by the adjoining tenements, and sold from boundary to boundary.
Barrow v. *Miller et als.*, 114.

The State is but a trustee of the lands granted it by Congress, or their proceeds, for the benefit of the inhabitants of the townships; and where notes are made payable to the State Treasurer, he may well stand in judgment for the rescission of the sale for non-payment of the price.
Hunter, State Treasurer, v. *Williams et als.*, 129.

The sale of a thing belonging to another person is null; it may give rise to damages when the buyer knew not that the thing belonged to another person.
Alexander v. *Gusman*, 251.

A sale of property without registry is binding upon those claiming as donees under a subsequent act of donation by the vendor.
Ibid.

Where the entire furniture of a dwelling was sold but not delivered, and the key of the building was not given up to the vendee, or any equivalent act done—*Held:* That there was no constructive delivery,

SALE, *(Continued.)*

although the policy of insurance on the furniture was transferred.
McCloskey v. *The Central Bank of Alabama,* 284.

The consent to transfer vests the property in the obligee; yet this effect is strictly confined to the parties until actual delivery of the object. If the vendor, being in possession, should by a second contract transfer the property to another person who gets the possession before the first obligee, the last transferree is considered as the proprietor, provided the contract be made on his part *bona fide* and without notice of the former contract. In like manner if personal property be transferred by contract, but not delivered, it is liable in the hands of the obligor to seizure and attachment in behalf of his creditors.
Ibid.

Sales or charges of personal property *are void* against *bona fide* purchasers and *creditors,* unless possession is given before such *bona fide* purchaser or creditor acquire his right to possession. What is delivery or possession depends on the nature of the property; it may be constructive or actual; the delivery of the key of the store in which it is contained; or an order accepted by the person in whose custody it is held, if at the order of the vendor, is good evidence of delivery.
Ibid.

The tradition or delivery is the transferring of the thing sold into the power and pssession of the buyer. The tradition or delivery of movable effects takes place either by the real tradition or by the delivery of the keys of the building in which they are kept, or even by bare consent of the parties if the things cannot be transported at the time of sale, or if the purchaser had them already in his possession under another title.
Ibid.

In all cases where the thing sold remains in the possession of the seller because he has reserved the usufruct, or retains possession by a precarious title, there is reason to presume that the sale is simulated, and with respect to third persons the parties must produce proof that they are acting in good faith, and establish the reality of the sale. This article is exceptional to articles 1917 and 2243.
Ibid.

That possession is called precarious, which one enjoys by the leave of another and during his pleasure. The title which excludes the ownership, such as a lease, is also called PRECARIOUS.
Ibid.

The origin of the title and the relationship of the vendor and vendee are matters of geneology; which is a proper subject of parol evidence.
Smith v. *Porter,* 370.

SALE, *(Continued.)*

A purchaser will not be made to comply with the terms of sale with a cloud resting upon his title. It is a different thing where the purchaser complies voluntarily with the terms of sale and goes into possession.

Succession of Mrs. Weber, 420.

The vendor, the production of whose authorization was promised, without being in default, does an act equivalent to such production of the original act of authorization, when he produces a ratification of the sale in due form.

Carpenter v. *Allen*. 435.

A party's right does not depend upon the registry of the act of ratification.

Ibid.

Whenever one of two innocent persons must suffer, the law throws the loss upon him by whose negligence or fault the damage is occasioned.

Ibid.

SALE, JUDICIAL.

The waiver of the advertisement deprives the sale by the Sheriff of its character of a formal sale.

Esnault v. *Cooley, Tutor*, 165.

The remedy by a sale *a la folle enchere*, is a harsh one, which must in all cases, be strictly preceeded by an observance of all the forms of law known in commutative obligations; and the putting in default, by a tender of a formal deed of sale, is a condition precedent to a recovery of damages.

Jennings v. *Hodges, Sheriff, et al.*, 321.

The Sheriff's return in relation to sales made by him under execution, is only *prima facie* evidence of the facts stated in it between the parties, and is subject, like other presumptive evidence, to be rebutted by contrary proof.

Grant & Co. v. *Harris et als.*, 323.

See INJUNCTION.
See JUDGMENT.
See MORTGAGE.
See PUBLIC LANDS.
See SHERIFF.

SEIZURE AND SALE.

Where an order of seizure and sale improvidently issues, the judgment of the lower court, directing it, will be revoked.

Templeton v. *Levee Commissioners*, 117.

See APPEAL.
See JURIES, &c.
See MORTGAGE.

SEPARATION.

Where a judgment of separation of property was rendered contradictorily, on due proof, and not upon the confession of the husband—*Held:* That the plaintiff was regularly separated in property with her husband, and that the decree of separation carried with it a dissolution of the community.
Mary Spencer v. *Rist et al.*, 318.

See Husband and Wife.

SEQUESTRATION.

Proceedings by sequestration against an absconding debtor, under the Act of 1826, before a different tribunal from that of the domicil of such absconding debtor, are *coram non judice*.
Spear et als. v. *Hagelberg*, 8.

The charges of a Sheriff for keeping property under a writ of sequestration, so far as they are not regulated by the fee bill, are the subject of proof, and not of judicial discretion.
Witkouski v. *Witkouski*, 232.

A writ of sequestration which has been issued without the affidavit and bond required by Art. 276 of the Code of Practice, will be set aside.
McClendon v. *Bennett & Addison*, 335.

SERVITUDES.

A strict and rigid application of the articles of the Code on the title of predial servitudes would be destructive to agricultural industry.
Minor v. *Wright*, 151.

Services imposed for the common or public utility relate to the space which is to be left for public use by the adjacent proprietors on the shores of navigable rivers, and for the making or repairing of levees, roads and other public or common works. C. C. 661.
Watson v. *Marshall*, 231.

All that relates to this kind of servitude is determined by laws or particular regulations. C. C. 661.
Ibid.

The 5th section of the Act of 1829 provides: "That the earth which shall be employed for the repairs and construction of a levee shall be taken at the distance of at least twenty feet from the base of said levee, on the side of the river. An exception is made in regard to the parishes of Concordia and Ouachita, in which the Police Juries have plenary powers as to roads and levees. § 52.
Ibid.

Prescription ceases to run, whenever the debtor or possessor makes acknowledgment of the right of the person whose title they prescribed. So that where defendants aggravated a servitude within ten years, prescription was interrupted, and the plaintiff's right acknowledged.
Gillis & Co. v. *Nelson & Donalson*, 275.

The verbal declarations of a defendant may be given in evidence even

SERVITUDES, *(Continued.)*

to charge land with a servitude, when they tend to interrupt prescription.

Ibid.

He to whom a servitude is due has a right to make all the works necessary to use and preserve the same. Such works are at his expense, and not at the expense of the owner of the estate which owes the servitude, unless the title by which it is established shows the contrary.

Ibid.

If the proprietor of two estates between which there exists an apparent sign of servitude, sell one of those estates, and if the deed of sale be silent respecting the servitude, the same shall continue to exist actively or passively in favor or upon the estate which has been sold.

Ibid.

There may be different kinds of rights to estates: 1st, a full and entire property; 2d, a right to the mere use and enjoyment; 3d, a right to certain services due upon the estate.

Cantrelle v. *Roman C. Con. of St. James*, 442.

SHERIFF.

It is essential to the perfection of a sheriff's sale that the purchaser should substantially comply with the terms of adjudication, which is the condition upon which the property is to be his. The price must be paid or the proper sureties offered when the sale has been made on a credit, otherwise the Sheriff shall expose to sale anew the thing seized and adjudge it to another person. Therefore, every sale upon execution, which is not completed by the payment of the price to the Sheriff, is null.

Haynes v. *Breaux et al.*, 142.

Where a creditor enters satisfaction upon the execution to the amount of the bid, at the time of the adjudication, it might be regarded as a waiver of the right to insist upon payment in currency to the Sheriff.

Ibid.

A Sheriff must make a return of the writ on the return day, but he may retain a copy in order to carry out his execution. Act of 1855, No. 199.

Wallis v. *Bourg, Sheriff, et als.*, 176.

One who retains money deposited in his hands as Sheriff, after he has ceased to act as such, will continue subject to the summary process provided by law for the benefit of suitors where such officers are concerned.

Grayson v. *Paris*, 256.

See **Sale, Judicial.**

See **Sequestration.**

SHIPPING.

Where the shipper of goods took a bill of lading with the endorsement upon the margin "*weight and contents unknown*," and on the arrival of the vessel at New Orleans they were condemned by the Port Warden to be sold as damaged goods—*Held:* That under such a bill of lading, the common carrier has complied with his contract when he has delivered the box externally in good order and condition; and the burden of proof rests on the consignee to show that the contents of the box were in good order and condition at the time of the shipment.

Wentworth v. *Ship Realm et als.*, 18.

The master of a ship or other vessel has no general authority, as such, to sign a bill of lading for goods which are not put on board the vessel; and for the want of such authority, the owners of a ship are not responsible to parties taking a bill of lading which has been signed by the master without receiving the goods on board.

Fellows v. *Steamer R. W. Powell et als.*, 316.

See Attachment.
See Sale.

SIMULATION.

Where there was an actual delivery by the vendors of a steamboat to the vendee, and the vendors, who were the captain and clerk of the boat at the time of the sale, afterwards engaged their services to the vendee and took charge of the boat for him—*Held:* That it could not be considered possession of the vendors, by a precarious title, giving rise to the presumption of simulation.

England v. *Commercial Ins. Co. of Ohio et al.*, 5.

See Evidence.

SLAVES AND STATU LIBERI.

Under the Act of 1840, the mere fact of a slave being found on board of a boat without a written permission, creates a presumption against the owners of a boat, that such slave was received with the intention of depriving his master of him or of transporting him out of the State, or from one part of the State to another; and this presumption cannot be destroyed but on testimony of at least two witnesses not employed on board such vessel, and on corroborating circumstances.

Pelham v. *Steamboat Messenger et als.*, 99.

The requirement of this statute of 1840, that the witnesses called to rebut the presumption must be such as are not employed on the vessel, refers to the time when they are called to testify. The fact that they have at a period past been employed on the vessel, will be no objection to their testimony if it be shown that at the time

SLAVES AND STATU LIBERI, *(Continued.)*

they were summoned to give their testimony they were *bona fide* engaged in some other employment.

Ibid.

SOLIDARITY.

See Bills of Exchange, &c.

See Offences.

SUBROGATION.

Subrogation takes place of right for the benefit of him who, being himself a creditor, pays another creditor whose claim is preferable to his, by reason of his privileges or mortgages.

Spiller & Allen v. *Their Creditors*, 292.

SUCCESSIONS.

The widow is only the usufructuary of the homestead conferred under the Act of 1852; the naked ownership is in her children; and therefore, no debt due by the widow to the succession of her husband, can be offsetted against the homestead, so as to diminish the capital of the same.

Succession of Schexnaydre, 195.

Where the succession is less than one thousand dollars a special mortgage cannot oppose the allowance of a homestead to the children.

Ibid.

A third possessor of property which is subject to a mortgage and vendor's privilege—having been purchased at a probate sale of succession property—has no right to plead a want of registry of such mortgage where it appears that he was one of the subscribing witnesses to the proces-verbal of the sale of the property.

Brown, Adm'r, v. *Sadler*, 206.

The step-father is not an heir at law to the step-son.

Skipwith & Osborne v. *Lea*, 247.

The widow is not bound, under the homesead Act of 1852, p. 172, to postpone her action until the final liquidation of the estate. Such a suit, however, must carry with it a virtual renunciation of the community.

Mary P. Harbour v. *Haynes, Adm'r*, 254.

When the widow shows by proof her necessitous circumstances, it is not requisite for her to prove that her husband had no descendants from any prior marriage in order to be relieved from giving the security required of usufructuaries under the Code.

Ibid.

Any remission made to heirs is an advance on their portion in the succession, and is, therefore, subject to collation.

LeBlanc v. *Bertant et als.*, 294.

SUCCESSIONS, *(Continued.)*

A debt to the succession, not yet duė, is susceptible of partition.
Ibid.

In case the debtor refuse or neglect to accept an inneritance, to the prejudice of his creditors, *they* may accept the same, and exercise all his rights in the manner provided for under the title of successions; and they are authorized, by virtue of the action given by this section, to exercise all the rights which the debtor could do for recovering possession of the property to which he is entitled, in order to make the same available to the payment of their debts.
Martha A. Gardner v. *Montagne*, 299.

An heir who subsequently accepted the succession of his mother, after his creditors had been substituted, cannot be received to enquire, at least as against a third innocent possessor, into the legality of the proceedings which transpired before the acceptance.
Ibid.

See Clerks of Court.
See Dowry.
See Executors and Administrators.

SURETY.

A surety who pays a judgment, and is thereby subrogated to the rights of the creditor against the principal debtor, may issue execution on the judgment in the name of the creditor for the recovery of the amount which, as surety, he has paid.
Connely v. *Bourg, Sheriff, et al.*, 108.

Where a drawer gives two endorsers as co-sureties, the one that endorses first is liable to the other for the whole debt.
Ibid.

A surety has no interest in enquiring into a suit further than to be assured of his subrogation when he makes payment. He, therefore, cannot complain of irregularity in the proceedings when they do not affect *him*.
Hennen v. *Wood et al.*, 263.

The surety is entitled to the benefit of all the securities in the hands of the creditors, and if any of them is lost by his acts, neglect, or want of due diligence, he is, to that extent, discharged.
Succession of Pratt, 357.

A surety on a tutor's bond has a right to demand the cancellation of the bond, when, without his consent, any of his co-sureties are released by a judgment homologating the proceedings of a family meeting which consented to the erasure of the name of the co-surety from the bond.
Ibid.

The discharge of the surety, under the article of the Code, only takes place to the extent to which the acts of the creditor have preju-

SURETY, *(Continued.)*

diced the recourse of the surety for reimbursement of what he may be obliged to pay under his contract of suretyship.

Ibid.

The action of any of the sureties with their principal, cannot bind the creditors to whom the purchase price is due.

Miller & Co. v. *Steamer S. F. J. Trabue et al.*, 375.

In order to bind the surety on an appeal bond, it is necessary to require the creditor to point out property on the neglect or refusal of the debtor to do so. The demand on *both parties* is essential.

Perkins v. *Bard et al.*, 443.

The surety is discharged, when, by the act of the creditor, the subrogation to his rights, mortgages and privileges, can no longer be operated in favor of the surety.

Kennedy v. *Bossiere*, 445.

See Appeal.
See Attachment.
See Married Women.
See Principal and Agent.

TAXES, TAX SALES AND TAX COLLECTORS.

It is not the State tax roll which creates the indebtedness for the local tax, it is the *ordinance* which levies the tax. Hence a person who has removed with his property out of the State, after the assessment of the State tax, but before any local tax is assessed, is not indebted for such local tax.

Templeton v. *Levee Commissioners*, 117.

An assessment for levee purposes is not a tax within the meaning of the article 123 of the Constitution of 1852.

Richardson v. *Morgan, Collector, et al.*, 429.

See Appeal.
See Levees.
See New Orleans.
See Registry.

TITLE, PRECARIOUS.

See Simulation.

TRUST, PUBLIC.

See New Orleans.

TUTORS AND TUTORSHIP.

With regard to all contracts between the tutor and the ward who has become of age, the text of the law is explicit: these are null and void if not preceded by a full settlement of the tutorship. But as regards other fiduciary trusts, the prohibition is not so general, and for obvious reasons.

Vanwickle v. *Matta*, 325.

TUTORS AND TUTORSHIP, *(Continued.)*

Where an under tutor acts collusively and corruptly to defraud the minor, it will justify his removal from office; and damages will be awarded against him on proof of the loss sustained by his fraudulent conduct.
Marks, Under Tutor, v. *Mary A. Witkouski et al.*, 341.

Where letters of tutorship set forth that the party had "complied with the requisitions of the law to entitle him to letters of tutorship," it is evidence that bond had been given.
Smith v. *Mr. and Mrs. Porter*, 370.

A tutor cannot proceed to sell succesion property, by an order of the court, without the advice of a family meeting.
Succession of Mrs. Weber, 420.

Creditors have a two-fold remedy: to proceed against the tutor in the usual way, or to provoke the appointment of an administrator, a sale by whom does not require a family meeting.
Ibid.

The heirs having a mere residuary interest in the estate thus administered, the payment of the debts must be effected even without reference to the appraisement of the property to be adjudicated.
Ibid.

The mandate of the executors is primarily to see that the intentions of the testator as expressed in the will are carried out. The administrator is appointed to pay debts and deliver the estate to the heirs. The curator of a vacant estate must sell, pay debts, and pay residue into the State Treasury. The mission of the tutor is to administer the estate of the *minor*, and he may administer any succession falling to him.
Ibid.

A meeting of the family must declare that the sale or mortgage of a minors's estate is of absolute necessity, or to his evident advantage.
Ibid.

By the Court:—Where there is such irregularity in the decree ordering the sale of minors' property, as to render it liable to a reversal on a suspensive appeal, which still appears to be open to the undertutor, we will not compel the purchaser to comply with the terms of sale.
Ibid.

USUFRUCT.
See SUCCESSIONS.

WAIVER.
See BILLS OF EXCHANGE, &c.

WARRANTY.
See SALE.

WILLS.

See Donations.

WITNESS.

A party to a suit cannot be received as a witness if he is liable for costs; he cannot in such case be considered as testifying against his interest.

Bullitt v. *Stewart*, 22.

The exclusion of the citizen from giving evidence is somewhat opposed to natural right, and ought not to be extended beyond the letter of the law.

Pelham v. *Steamboat Messenger et al.*, 99.

One of several plaintiffs cannot release his co-plaintiffs from the payment of costs, in order to make them disinterested witnesses.

Roselius et al. v. *Barelli et al.*, 386.

Where the interest of a witness is neutralized, he is competent.

Rhodes et als. v. *Myers et als.*, 398.

A witness must not be interested, either directly or indirectly, in the cause.

Kennedy v. *Bossiere*, 445.

See Criminal Law.
See Evidence.
See Slaves, &c.